FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL:	99-15
DATE ACTIVATED:	October 8, 1999
EXPIRATION OF STATUTE OF LIMITATIONS:	August 15, 2000[1]
STAFF MEMBERS:	Joel J. Roessner Angela Whitehead Quigley

SOURCE: Internally Generated

RESPONDENTS: The Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer

The Democratic National Committee, and Carol Pensky, as treasurer

President William J. Clinton

MUR:	4713
DATE COMPLAINT FILED:	January 30, 1998
DATE OF NOTIFICATION:	February 6, 1998
DATE ACTIVATED:	May 5, 1998
EXPIRATION OF STATUTE OF LIMITATIONS:	August 15, 2000
STAFF MEMBERS:	Joel J. Roessner Angela Whitehead Quigley

SOURCE: Complaint Generated

COMPLAINANT: Lenora B. Fulani

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[1] The statute of limitations date for the earliest violative activity in this matter is August 15, 2000 for the Democratic National Committee's first payment for an advertisement flight which it made on August 15, 1995. Such payments occurred throughout the period of time from August of 1995 through September of 1996, and the limitations period therefore will run on a rolling basis between August 2000 and September 2001.

RESPONDENTS:

Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer

Democratic National Committee, and Carol Pensky, as treasurer

President William J. Clinton

Harold M. Ickes, Esquire

RELEVANT STATUTES:

2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431(18)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(2)(C)
2 U.S.C. § 434(b)(4)
2 U.S.C. § 434(b)(4)(H)(i)
2 U.S.C. § 434(b)(4)(H)(iv)
2 U.S.C. § 434(b)(4)(G)
2 U.S.C. § 437f(c)
2 U.S.C. § 441a
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(b)(2)(B)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(d)(2)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b
2 U.S.C. § 441b(a)
2 U.S.C. § 9003
2 U.S.C. § 9004
26 U.S.C. § 9033(a)
26 U.S.C. § 9035(a)
26 U.S.C. § 9036(a)
26 U.S.C. § 9038
26 U.S.C. § 9038(b)
26 U.S.C. § 9039(b)
11 C.F.R. § 100.7(a)(1)(iii)
11 C.F.R. § 100.8(a)(1)(iv)(A)
11 C.F.R. § 100.22(b)
11 C.F.R. § 102.5(a)
11 C.F.R. § 102.5(a)(1)
11 C.F.R. § 102.5(a)(1)(i)
11 C.F.R. § 102.5(b)

11 C.F.R. § 102.9(e)
11 C.F.R. § 104.10(b)(1)
11 C.F.R. § 104.13(a)(1)
11 C.F.R. § 104.13(a)(2)
11 C.F.R. § 106.1(d)
11 C.F.R. § 106.5(a)
11 C.F.R. § 106.5(a)(2)(i)
11 C.F.R. § 106.5(a)(2)(iv)
11 C.F.R. § 106.5(b)
11 C.F.R. § 106.5(b)(2)(i)
11 C.F.R. § 106.5(d)
11 C.F.R. § 109.1(b)(4)
11 C.F.R. § 110.2(b)(2)(ii)
11 C.F.R. § 111.4(d)(1)
11 C.F.R. § 111.4(d)(2)
11 C.F.R. § 111.4(d)(3)
11 C.F.R. §114.2(a)
11 C.F.R. §114.2(b)
11 C.F.R. § 114.2(c)
11 C.F.R. § 114.4(c)(5)
11 C.F.R. § 9007.2(c)(3)
11 C.F.R. § 9034.4(e)
11 C.F.R. § 9034.4(e)(1)
11 C.F.R. § 9034.4(e)(6)
11 C.F.R. § 9038.2(c)(3)
11 C.F.R. § 9038.3

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: United States Senate Committee on Governmental Affairs Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns

I. GENERATION OF MATTER

Audit Referral ("AR") 99-15 was referred by the Audit Division to the Office of General Counsel on June 15, 1999 and was generated from an audit of the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") undertaken in accordance with 26 U.S.C. § 9038(a). Attachment 1. The Primary Committee is the authorized committee of President William J. Clinton for his campaign for the Democratic nomination in the 1996 Presidential elections. The Primary Committee registered with the Commission on April 14, 1995 and received $13,412,197.51 in public funds for the purpose of seeking the nomination. *See* 26 U.S.C. §§ 9033(a) and 9036(a). One matter referred to this Office is the issue whether the cost associated with the production and broadcast of certain advertisements funded by the Democratic National Committee ("DNC") were in-kind contributions to the Primary Committee.[2]

Matter Under Review ("MUR") 4713 was generated by a complaint filed by Lenora B. Fulani, naming President William J. Clinton, the Democratic National Committee ("DNC"), the Primary Committee, Harold M. Ickes and 20 "John Does" as respondents. Attachment 2. Dr. Fulani alleges that the respondents and their agents "entered into a conspiracy . . . to prevent a challenge to [President] Clinton in the 1996 presidential primaries and caucuses . . . by using their political control of the DNC to arrange for the expenditure of 'soft money' in furtherance of this goal." *Id.* at ¶ 8.

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This Report is based on materials referred to this Office from the Audit Division. Additionally, the Report makes use of materials gathered in the investigation of MURs 4407 and 4544. MURs 4407 and 4544 relate to the same issues addressed in AR 99-15, namely the apparent excessive contributions made by the DNC to the Primary Committee through the in-kind contribution of the production and broadcast of television advertisements. In MURs 4407 and 4544, the Commission found reason to believe on February 10, 1998, that, *inter alia*, that the DNC made, and the Primary Committee received, excessive contributions in violation of 2 U.S.C. § 441a.[3] On this same date, the Commission authorized subpoenas for documents and deposition testimony and orders to answer questions.[4] In response to this compulsory process, this Office received documents and answers to interrogatories, although motions to quash also were submitted in response. Consequently, since the Commission has this material in its possession, this Report relies on documents submitted under subpoena in MURs 4407 and 4544.[5]

The Office of General Counsel was prepared to move MURs 4407 and 4544 to the probable cause stage and recommended that, in light of the overlapping media expenditure issues, MURs 4407 and 4544 be processed together with AR #99-15 and MUR 4713. However, on September 22, 1999, the Commission rejected this Office's recommendations and directed this Office to hold in abeyance the briefing of MURs 4407 and 4544 pending the Commission action on the current Report on AR #99-15 and MUR 4713. If the Commission finds reason to

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[3] The Commission adopted an alternative finding in MURs 4407 and 4544 that the Clinton/Gore '96 General Committee also received an in-kind contribution from the DNC, based on the same facts, pending the receipt of additional information that may inform the determination of which committee actually received the contribution. This Report addresses the issue of where the contribution should be attributed in the analysis section, set forth below.

[4] The Commission also found reason to believe that the Primary Committee exceeded the overall expenditure limitation in MURs 4407 and 4544.

[5] Discovery was not completed in MURS 4407 and 4544.

believe that any violations of the Act occurred based on this Report, this Office recommends that the audit referral enforcement matter and MUR 4713 be processed with MURs 4407 and 4544.

II. COMPLAINT AND REPSONSES

A. Complaint

Dr. Fulani alleges that the respondents and their agents "entered into a conspiracy" to use political control of the DNC to finance a media campaign to deter any primary challenge to President Clinton. Attachment 2 at ¶¶ 8-10. For a description of the particulars of the DNC media campaign, Dr. Fulani incorporates by reference a complaint that Common Cause filed on October 9, 1996 with the United States Department of Justice (the "Common Cause Complaint").[6] Attachment 2 at ¶ 10; *see* Attachment 3. Dr. Fulani claims that the use of DNC funds to finance this media campaign violated the presidential primary spending limits, the prohibition on corporate and union contributions to a federal candidate, the limits on use of individual contributions and the disclosure requirements. Attachment 2 at ¶ 9.

Dr. Fulani also alleges that the respondents' conspiracy to deter a primary challenge to President Clinton was furthered by having Mr. Ickes "coordinate the conspiracy despite his status

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[6] The Common Cause Complaint requests that the Attorney General appoint an independent counsel to investigate whether the DNC and the Primary Committee criminally violated federal campaign finance laws. Attachment 3 at 1. In general, Common Cause alleges that the Primary Committee spent millions of dollars in excess of the overall presidential primary spending limit by having the DNC pay for television advertisements that benefited President Clinton at the direction of the Primary Committee. Common Cause alleges that the money the DNC spent on the television advertisements was not counted against the spending limit applicable during the presidential primary period. Specifically, it claims that "from the summer of 1995 through the summer of 1996, the [Primary] Committee ran an ad campaign through the [DNC] to promote President Clinton's reelection." Attachment 3 at 15. Common Cause further contends that the Primary Committee spent at least $34 million more on the television advertising campaign than "it was legally permitted to spend during the presidential primary campaign, and in doing so used at least $22 million in 'soft money' contributions that cannot be legally used to directly support a presidential candidate." *Id.* Common Cause refers to *The Choice*, by Robert Woodward, as well as various press articles that discuss the television advertising campaign paid for by the DNC. Common Cause also asserts that Primary Committee agents designed, produced, and raised money to pay for the television advertisements, in addition to determining and making the advertisement placements. Moreover, it suggests that, based on FEC disclosure reports, the DNC spent $27 million on the advertisement campaign in 12 targeted states between July 1, 1995 and June 30,

as a government employee and Deputy Chief of Staff for Clinton . . . ," and by inducing the Commission to issue a repayment determination in connection with Dr. Fulani's 1992 presidential campaign that was "large enough to make it impossible for Fulani to proceed with her planned 1996 primary challenge to Clinton." *Id.* at ¶¶ 10-11. She goes on to claim that the respondents and "other similarly situated persons" have, over the past 25 years,

> . . . labored to create a political environment in which the Commission and its staff could be manipulated to impede insurgent candidates and potential candidates such as Fulani by subjecting them to audit and enforcement activity beyond what is permitted by law while ignoring violations of the federal election laws by respondents and other similarly situated persons.

Id. at ¶ 11. Dr. Fulani alleges that, as to her, this manipulation of the Commission resulted in the Commission commencing a routine audit of Fulani '92 in January of 1993, making an initial repayment determination of $1,394 against Fulani '92 on April 21, 1994, and commencing a special audit inquiry of Fulani '92 on July 28, 1994.[7] *Id.*

Dr. Fulani goes on to describe her showing against incumbent Governor Mario Cuomo in the 1994 New York gubernatorial primaries, and suggests that her showing may have left Governor Cuomo vulnerable to his subsequent defeat by George Pataki. *Id.* at ¶ 12. She then describes her subsequent planning, together with a "successful Republican fundraiser and political strategist," to wage a similar primary challenge against President Clinton in the 1996 Democratic presidential primary elections. *Id.* at ¶ 13. Dr. Fulani further alleges that, on August 3, 1995, the Commission issued a repayment determination in connection with the

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1996. *Id.* at 22. Finally, Common Cause alleges that the television advertisements were "the same kind of ads that any candidate would run to promote his candidacy or criticize his opponent." *Id.* at 23.

[7] Pursuant to an inquiry conducted under 26 U.S.C. § 9039, the Commission determined that Dr. Lenora B. Fulani and her 1992 presidential committee, Lenora B. Fulani for President, must repay $117,269.54. The United States Court of Appeals for the District of Columbia Circuit reviewed, and upheld, the Commission's final repayment determination. *Lenora B. Fulani for President Committee v. Federal Election Commission*, 147 F.3d 924 (D.C. Cir. 1998).

special audit inquiry of Fulani '92, and that her planned challenge against President Clinton was stymied by fact that the special audit inquiry against Fulani '92 was not resolved quickly. *Id.* at ¶¶ 14-15. Dr. Fulani concludes with the allegation that:

> ". . . soft money" was expended by respondent DNC and its agents in coordination with respondents Clinton, Clinton/Gore '96 [Primary Committee] and Ickes and their agents to cause the occurrence of some or all of the events described [in the complaint], and other such events unknown to the complainants [sic] at this time, in order to subvert Fulani's 1996 primary campaign against Clinton.

Id. at ¶ 16.

Dr. Fulani thereafter filed a letter, which was received by the Commission on April 22, 1999. Attachment 4. Therein she asked that her Complaint be supplemented to incorporate Agenda Document 98-85, the November 19, 1998 proposed Report of the Audit Division on the Clinton/Gore '96 Primary Committee, Inc. ("November 19, 1998 Report"). Attachment 4; *see* Attachment 5. Dr. Fulani directed the attention of the Commission to finding III.A of the November 19, 1998 Report. Attachment 4.

Finding III.A of the November 19, 1998 Report sets forth the Audit staff's conclusion that the amounts expended by the DNC to fund the media campaign appear to be contributions to the Primary Committee and President Clinton. Attachment 5 at 9-43. In support of its finding, the Audit Division noted that it appeared that the DNC coordinated with the Primary Committee in connection with the media campaign, citing evidence of shared media production expenses, coordination in connection with the selection of stations where the advertisements were broadcast, joint White House meetings related to political polling, joint planning of the production and placement of the advertisements, and the use of the same images and sound components in advertisements funded by the DNC as were used in advertisements funded by the Primary Committee. *Id.* at 16-23. The Audit staff further noted that the advertisements funded

by the DNC appeared to compare policy positions adopted or advocated by President Clinton with those associated with Senator Robert J. Dole, House Speaker Newt Gingrich or the Republican Party. *Id.* at 23-24. Based on its review of the advertisements and the context in which the advertisements were published, the Audit staff concluded that the advertisements met "both the 'clearly identified candidate' and 'electioneering message' tests." *Id.* at 38. On December 10, 1998, the Commission unanimously voted to "reject[ ] the recommendations of the Audit Division regarding repayment determinations arising from the issue ads in the Clinton and Dole '96 primary elections." *See* Certification [Agenda Documents No. 98-85 and No. 98-87] dated December 15, 1999.

B. Responses

1. DNC Response To Dr. Fulani's Complaint

In response to Dr. Fulani's complaint, the DNC incorporates by reference its response in MUR 4407, filed on August 16, 1996. Attachment 6; *see* Attachment 7. In its response in MUR 4407, the DNC contends that the Commission should find no reason to believe that it violated the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 *et seq.* ("the Act" or "FECA") and dismiss the complaint. Attachment 7 at 1.

The DNC argues that the complaint does not comply with 11 C.F.R. § 111.4(d)(3) because it does not contain "a recitation of *any* facts which describe a violation by the DNC of 2 U.S.C. § 441a(d)(2) or of any other statutory provision or regulation." *Id.* at 3 (emphasis in the original). The DNC maintains that the complaint fails to identify or describe the advertisements in question and fails to indicate the broadcast dates of the advertisements or their contents. *Id.* at 4. The DNC asserts that the complaint contains no facts suggesting or indicating that the advertisements conveyed an electioneering message as required by Advisory Opinion ("AO")

1985-14, and therefore, it made no coordinated party expenditures pursuant to 2 U.S.C. § 441a(d).[8] *Id.*

In its response in MUR 4407, the DNC further claims that even if allegations of coordination were "legally relevant," the complaint contains no evidence to support them. *Id.* at 7. The DNC argues that *The Choice* is not "a factual or accurate report of the events and conversations it recounts" and "[i]t is not the kind of material that should be treated as substantial, cognizable evidence of anything." *Id.* The DNC asserts that even though the Commission permits complaints to be based on newspaper articles, such articles need to be "well-documented and substantial." *Id.* The DNC claims that the excerpts from *The Choice* in the complaint are neither well-documented nor substantial.[9] *Id.* at 8.

The DNC, in its MUR 4407 response, makes the alternative argument that even if the Commission accepts the complaint pursuant to 11 C.F.R. § 111.4(d)(3), the advertisements it ran during the 1995-96 election cycle were not subject to 2 U.S.C. § 441a(d) (and therefor no violation of the Act occurred) because the DNC advertisements "do not convey or contain an 'electioneering' message" and "did not expressly advocate the election or defeat of any candidate – which is the proper standard for determining when the costs of a party communication are subject to [section 441a(d)] limits." *Id.* at 12.

With respect to the electioneering message standard, the DNC claims that the advertisements it ran during the 1995-96 election cycle were legislative in nature and were the

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[8] The DNC further argues that under the "electioneering" test, the Commission presumes that a party coordinates its communications with its candidates. Attachment 7 at 5. Relying on *Colorado Republican Campaign Committee v. FEC*, 518 U.S. 604 (1996), the DNC asserts that coordinated party expenditures are subject to limitation under 2 U.S.C. § 441a(d) only when the communication depicts a clearly identified candidate and contains an electioneering message. *Id.*

[9] As an example of the inaccuracy of *The Choice*, the DNC cites a letter from the General Counsel to *The Washington Post* disputing statements that were attributed to him. Attachment 7 at 8.

same type of advertisement as was described in AOs 1985-14 and 1995-25. *Id.* at 12. The DNC contends that, pursuant to 2 U.S.C. § 437f(c), it was "clearly entitled" to rely on these advisory opinions in determining that its advertisements did not contain an electioneering message. *Id.* at 11-12.

The DNC argues that its advertisements likewise do not satisfy the definition of "expressly advocating" set forth at 11 C.F.R. § 100.22(b), nor do they "expressly advocate the election or defeat of any candidate" as that term has been defined by several courts.[10] *Id.* at 12-16. The DNC further urges that the "express advocacy" standard, not the "electioneering message" standard, is the proper test for determining whether expenditures for advertisements are subject to 2 U.S.C. § 441a(d). Specifically, the DNC asserts that the Commission should construe the limits of 2 U.S.C. § 441a(d) to apply only when a communication expressly advocates the election or defeat of a clearly identified candidate, because a broader construction would impair its ability to communicate party positions on various issues and would have a direct impact on its First Amendment associational rights. *Id.* at 16-22. The DNC further argues that "not all party expenditures that are coordinated with candidates implicate the statutory purposes [of 2 U.S.C. § 441a(d)]." *Id.* at 23. The DNC claims that it may need to communicate with candidates because they are also "party officials, leaders and spokespersons" and that party positions and communications may need to be coordinated with one or more candidates. *Id.* at 25. Moreover, the DNC claims that 2 U.S.C. § 441a(d), if construed broadly, may be

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[10] The DNC cites *Federal Election Commission v. Christian Action Network*, No. 95-2600, 1996 U.S. App. LEXIS 19047 (4th Cir., August 2, 1996) (*per curiam*); *Maine Right to Life Committee, Inc. v. Federal Election Commission*, 914 F. Supp. 8 (D. Me. 1996); and *Federal Election Commission v. Survival Education Fund*, No. 89 Civ. 0347, 1994 U.S. Dist. LEXIS 210 (S.D.N.Y., Jan. 12, 1994), *aff'd in part, rev'd in part on other grounds*, 65 F.2d 285 (2d Cir. 1995).

unconstitutionally vague because the DNC will be "required to guess at what point along the broad spectrum the limits of section 441a(d) will apply." *Id.* at 26.

2. The Response Of The Primary Committee and Mr. Ickes To Dr. Fulani's Complaint

On February 25, 1998, the Primary Committee and Mr. Ickes filed a joint response to Dr. Fulani's complaint. Attachment 8. The joint response denies that the Primary Committee or Mr. Ickes solicited illegal contributions, and argues that the complaint cites no evidence to support the claim that they solicited such contributions. *Id.* at 2. The Primary Committee and Mr. Ickes next deny that they engaged in the coordination of a conspiracy, and urge that the complaint contains nothing to substantiate the claim of a conspiracy. *Id.* at 2-3. They also note that, to the extent that the complaint's references to Mr. Ickes' status as Deputy Chief of Staff to the President are intended to suggest that Mr. Ickes was not permitted to engage in political activities, that issue is not a matter within the Commission's jurisdiction. *Id.* at n. 4. They also deny that the Primary Committee or Mr. Ickes induced the Commission to issue a repayment determination against Dr. Fulani, and point out that the Commission should be aware that it was not so induced. *Id.* at 3.

The Primary Committee and Mr. Ickes next dispute that they coordinated the expenditure of soft money for the purpose of deterring Dr. Fulani from entering the democratic primaries, deny that they expended soft money and, further, claim that:

> The purpose of the advertisements was a bona fide effort on the part of the party and the administration to sway public opinion on critical national issues facing Congress. That they also benefited Democratic candidates in the 1996 election was both legal and appropriate, and was done in a manner absent of express advocacy or electioneering, as required by law.

Id. at 3. On this issue, the Primary Committee and Mr. Ickes further argue that, as a matter of fact, a potential Fulani candidacy was not a consideration for any of the Primary Committee's actions or decisions. *Id.* at 3-4. They also argue that Dr. Fulani has provided no support for her claim that respondents coordinated the expenditure of soft money for the purpose of thwarting a Fulani candidacy. *Id.* at 4.

The Primary Committee and Mr. Ickes also argue that "Commission procedures and precedents preclude the Common Cause letter from being considered a complaint against the respondents unless filed by Common Cause itself." *Id.* at 4. A copy of the Response of The Democratic National Committee, The Clinton/Gore '96 Primary Committee, Inc. and The Clinton/Gore '96 General Committee, Inc., dated February 1998, is appended to the joint response, to be considered by the Commission in the event that it considers matters raised in the Common Cause Complaint. Attachment 9.[11]

The Primary Committee and Mr. Ickes next dispute that they engaged in manipulation of the Commission, characterizing Dr. Fulani's claims as "ludicrous." Attachment 8 at 4. They suggest that President Clinton's 1992 primary and general election committees, not Dr. Fulani, are, in fact, the victims of selective enforcement by the Commission:

> . . . the Act was fully enforced with respect to the 1992 election and the audit of the [Primary] Committee's 1992 predecessors, the Clinton for President Committee and Clinton/Gore '92. In fact, those Committees would argue that the Commission singled them out for disparate treatment and chose to audit or enforce certain matters not audited or enforced against other campaigns or committees.

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[11] This Response was a reply to the reason to believe findings in MURs 4407 and 4544. The Response sets forth the argument that express advocacy is the "standard for determining 441a(d) vs. issue advocacy expenditures" and that candidate control over expenditure for advertisements, or coordination between the expending party and the candidate, are irrelevant. Attachment 9 at 16-40. The Response further argues that the advertisements funded by the DNC in question do not satisfy the express advocacy or electioneering message standards. *Id.* at 40-48.

Id. at 4-5. Finally, the Primary Committee and Mr. Ickes deny that they expended soft money to cause the Commission to take adverse actions against Dr. Fulani and thereby interfere with her 1996 primary campaign. *Id.* at 5. By letter dated April 14, 1998, President Clinton adopted the Primary Committee and Mr. Ickes' response as his response to Dr. Fulani's Complaint.

3. The Primary Committee's Response During The Audit

As noted at page 10, *supra*, Dr. Fulani supplemented her complaint by incorporating by reference Section III.A. of the Audit Division's November 19, 1998 Report. Prior to the submission of the November 19, 1998 Report, the Audit staff on May 15, 1998 submitted an Exit Conference Memorandum to the Primary Committee. Attachment 10. Section III.A of the Exit Conference Memorandum addresses the same issue of the DNC funded media, and sets forth substantially the same analysis as is set out in the November 19, 1998 Report.

The Primary Committee and the Clinton/Gore '96 General Committee, Inc. ("General Committee") submitted a joint response on this issue, dated July 29, 1998 ("July 29, 1999 Response").[12] *See* Attachment 5 at 147-186. Therein, the committees argue the advertisements were constitutionally protected issue advocacy, and that evidence of coordination with the DNC does not alter the protected character of the communications. *Id.* at 151-157. The Committees further argue that the evidence of coordination presented by the Audit staff is irrelevant and inaccurate. *Id.* at 157-162. The Committees also argue that the advertisements in question met neither the "electioneering message" nor the "express advocacy standards." *Id.* at 162-183. Finally, the committees dispute the Audit Division's analysis of the content of the advertisements. *Id.* at 183-185.

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[12] The General Committee is the authorized committee for President Clinton and Vice President Albert Gore for the 1996 general election campaign. The General Committee registered with the Commission on August 1, 1996, and received $61,820,000 in public funds for the general election campaign. *See* 26 U.S.C. §§ 9003 and 9004.

III. LAW

A. An Expenditure Made In Coordination With A Candidate For Federal Office And For The Purpose Of Influencing An Election For Federal Office Is An In-kind Contribution To The Candidate

A contribution includes any gift, subscription, loan, advance, deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

An expenditure includes any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(9)(A)(i). "Anything of value" includes in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

An expenditure "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents" is a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i); *Buckley v. Valeo*, 424 U.S. 1, 78 (1976) (the term "contribution" includes "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate"); *see* 11 C.F.R. § 109.1(b)(4).[13] The United States Supreme Court held that there was no coordination in a

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[13] Commission regulations provide additional guidance on the activities that constitute coordination. *See, e.g.*, 11 C.F.R. § 114.2(c) (any coordinated communications may negate the independence of any subsequent communications); 11 C.F.R. § 114.4(c)(5) (concerning voter guides that include express advocacy: any contact or other cooperation, coordination, consultation, request, or suggestion will result in a contribution; concerning voter guides that do not include electioneering messages: any contact other than written exchanges about the candidate's positions on issues will result in a contribution); *but see Clifton v. FEC*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S. Ct. 1036 (1998)(declaring 11 C.F.R. § 114.4(c)(5) invalid under First Amendment insofar as it limited contact with candidates to written inquiries and replies); *cf.* 62 Fed. Reg. 24,367 (May 5, 1997) (notice of proposed rulemaking regarding the definition of coordination to be codified at 11 C.F.R. § 100.23) and 63 Fed. Reg. 69524 (Dec. 16, 1998) (notice of proposed rulemaking regarding publicly-financed Presidential primary and general election candidates, including issues concerning coordination between party committees and their respective Presidential candidates).

situation where uncontroverted direct evidence (submitted in connection with a motion for summary judgment) demonstrated that an "advertisement campaign was developed by [a state party committee] independently and not pursuant to any general or particular understanding with a candidate." *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 614 (1996)(plurality op.).[14] The Court held that evidence that the general practice of the state committee was to coordinate campaign strategy with its candidates did not specifically relate to the particular advertisements at issue, and therefore did not raise a triable issue on the question of coordination. *Id.*

The United States District Court for the District of Columbia recently examined the degree of coordination required to impair the independence of expenditures for speech-related activities, and held that "considerable coordination will convert an expressive expenditure into a contribution but . . . the spender should not be deemed to forfeit First Amendment protections for her own speech merely by having engaged in some consultations or coordination with a federal candidate." *FEC v. The Christian Coalition*, Civil Action No. 96-1781 (JHG) (Opinion and Order August 2, 1999) at 99. Addressing only "coordination as it applies to expressive coordinated expenditures[15] by corporations . . . ," *id.*, the District Court set out the following test to assess when such expenditures become contributions:

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[14] In *Colorado Republican*, the Court also held that the First Amendment prohibits the presumption that a national party committee's expenditures are coordinated with its congressional candidates. *Colorado Republican*, 518 U.S. at 608. The Court expressly limited this holding, stating: "Since this case involves only the provision concerning congressional races, we do not address issues that might grow out of the public funding of Presidential campaigns." *Id.*, 518 U.S. 604, at 612; *cf. RNC v. FEC*, 487 F. Supp. 280, 284-87 (S.D.N.Y.) (Congress may condition public funding eligibility upon candidate's voluntary acceptance of expenditure limits), *aff'd mem.* 445 U.S. 955 (1980). However, the Court did not specify to which public financing issues it was referring, and no presumption of coordination is being made in this matter. *Colorado Republican*, 518 U.S. 604, 612.

[15] As used in the *Christian Coalition* opinion, the term "expressive coordinated expenditure" was defined as "a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign." *Christian Coalition*, Opinion and Order at 86 n.45.

> In the absence of a request or suggestion from the campaign, an expressive expenditure becomes "coordinated;" where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots). Substantial discussion or negotiation is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.

Id. at 101.

A majority of the Commission voted not to appeal the *Christian Coalition* decision. In addition, this Office notes that the Commission is at present engaged in rulemaking on this issue.

B. An Expenditure Made In Coordination With A Candidate For Federal Office And For The Purpose Of Influencing An Election For Federal Office Is An In-kind Contribution To The Candidate Regardless Whether The Communication Contains "Express Advocacy," Or Contains An "Electioneering Message" And Refers To A "Clearly Identified Candidate"

In the case of expenditures for advertising or other communications which are made in coordination with the candidate, there is no additional requirement that the communication contain "express advocacy," or that the communication contain an "electioneering message" and refer to a "clearly identified candidate" for the expenditure to be treated as an in-kind contribution. *See Christian Coalition*, Opinion and Order at 89-94 (expressive coordinated expenditures are not limited to express advocacy).

1. Express Advocacy

In order to protect rights guaranteed by the First Amendment, the Supreme Court has limited the regulation of independent expenditures for speech-related activity to expenditures for communications containing "express advocacy." *Buckley*, 424 U.S. at 44, 46-47. However, the Court made clear that communications that are authorized or requested by the candidate, an

authorized committee of the candidate, or an agent of the candidate are to be treated as expenditures of the candidate and contributions by the person or group making the expenditure. *Buckley*, 424 U.S. at 46-47 n.53. The Court stated that coordinated expenditures are treated as in-kind contributions subject to the contribution limitations in order to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." 424 U.S. at 46-47.[16] Thus, if expenditures for communications are made in cooperation with, or at the direction of, a candidate or campaign staff, the communication need not contain "express advocacy" for the expenditure to be subject to federal regulation.[17]

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[16] The Supreme Court held that the absence of prearrangement or coordination of an expenditure "alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley v. Valeo*, 424 U.S. 1, 47 (1976).

[17] Subsequent cases have reiterated these basic principles. In *FEC v. Massachusetts Citizens for Life, Inc.*, the Supreme Court stated that expenditures by corporations that are made independent of any coordination with a candidate are prohibited by 2 U.S.C. § 441b only if they "expressly advocate the election or defeat of a clearly identified candidate." 479 U.S. 238, 248-49, 256 (1986)(quoting *Buckley*, 424 U.S. at 80). In *Colorado Republican Campaign Committee v. FEC*, the Supreme Court held that political parties may make independent expenditures on behalf of their congressional candidates without limitation. 518 U.S. 604 (1996). In *Colorado*, the Supreme Court reiterated the *Buckley* distinction between independent expenditures and coordinated contributions, and focused on whether the expenditures in that case were in fact coordinated. The Supreme Court noted that in previous cases, it had found constitutional "limits that apply both when an individual or political committee contributes money directly to a candidate and also when they indirectly contribute by making expenditures that they coordinate with the candidate, § 441a(a)(7)(B)(i)." 518 U.S. at 610. The Supreme Court's plurality opinion expressly declined to address the issue of whether limitations on coordinated expenditures by political parties are constitutionally permissible. 518 U.S. at 612. The opinion notes the similarities between coordinated expenditures and contributions: "many such expenditures are also virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills. . .)." 518 U.S. at 624.

The United States District Court for the District of Columbia recently rejected arguments to apply the express advocacy standard to coordinated expenditures for communications. *FEC v. The Christian Coalition*, Civil Action No. 96-1781 (JHG) (Opinion and Order August 3, 1999) at 89-94. Citing *Buckley*, the District Court emphasized that "with regard to 'coordinated expenditures' there is no constitutional need to narrow the definition of the term 'expenditure' given by Congress." *Id.* at 90 n.50. Similarly, in a case involving state election statutes similar to FECA, the Court of Appeals of Wisconsin held that the First Amendment did not prohibit the State of Wisconsin Elections Board from investigating expenditures by a non-profit corporation for postcards which discussed two candidates, but did not expressly advocate the election or defeat of either, where it was alleged that the non-profit corporation made the expenditures following consultation with one of the candidates. *Wisconsin Coalition for Voter Participation, Inc. v. State of Wisconsin Elections Board*, No. 99-2574 (Wis. Ct. App. Nov. 26, 1999).

2. Electioneering Message/Clearly Identified Candidate

The electioneering message/clearly identified candidate test was articulated by the Commission in AO 1985-14. Advisory Opinion 1985-14 involved television, radio and print advertisements, and mailers, which the Democratic Congressional Campaign Committee (DCCC) proposed to publish, and which purported to describe Republican policies. The Commission concluded that amounts used to fund the communications would be expenditures subject to the limitation set forth at 2 U.S.C. § 441a(d) if the communication depicted a clearly identified candidate and conveyed an electioneering message:

> In Advisory Opinion 1984-15, the Commission considered the application of the limitations of 2 U.S.C. § 441a(d) to expenditures for political advertising similar to DCCC's proposed communications. There, the Commission concluded that the limitations of § 441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message. See also Advisory Opinion 1978-46. Under the Act and regulations, a candidate is clearly identified if his or her name or likeness appears or if his or her identity is apparent by unambiguous reference. 2 U.S.C. § 431(18); 11 CFR § 106.1(d). Electioneering messages include statements "designed to urge the public to elect a certain candidate or party." United States v. United Auto Workers, 352 U.S. 567, 587 (1957); *see* Advisory Opinion 1984-62.

AO 1985-14 at 7.[18]

The Commission continued to apply the electioneering message/clearly identified candidate test in Advisory Opinions as recent as AO 1998-9.[19] Furthermore, the electioneering

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[18] Advisory Opinion 1984-15 involved two television advertisements which the RNC proposed to broadcast. The Commission determined that the advertisements had "[t]he clear import and purpose . . . to diminish support for any Democratic Party presidential nominee and to garner support for whoever may be the eventual Republican Party nominee . . . ." The Commission further stated that the advertisements "effectively advocate the defeat of a clearly identified candidate." Based on these determinations, the Commission explained that "expenditures for these advertisements benefit the eventual Republican presidential candidate and are made with respect to the presidential general election and in connection with the presidential general election campaign." The Commission concluded that expenditures for the advertisements therefore would be reportable either as contributions subject to the limitation set forth at 2 U.S.C. § 441a(a)(2)(A), or as coordinated party expenditures subject to the limitation set forth at 2 U.S.C. § 441a(d).

[19] In AO 1998-9 the Commission stated that:

message/clearly identified candidate test appears to have gained some acceptance from the courts. In *FEC v. Colorado Republican Federal Campaign Committee*, 59 F.3d 1015 (10th Cir. 1995) *rev'd on other grounds*, 518 U.S. 604 (1996), the Tenth Circuit reversed the District Court's holding that party-funded advertisements had to contain "express advocacy" for the amounts spent for the advertisements to be limited by 2 U.S.C. § 441a(d). Rather, the Court of Appeals expressly deferred to the Commission's "construction of § 441a(d) as regulating political committee expenditures depicting a clearly identified candidate and conveying an electioneering message . . . ." 59 F.3d at 1022, citing Advisory Opinion 1984-15. Applying this test, the Tenth Circuit held that the Colorado Republican Party's 1988 advertisements in opposition to then Senator Timothy Wirth's record "unquestionably contained an electioneering message." According to the court, these advertisements had left "the reader (or listener) with the impression that the Republican Party sought to 'diminish' public support for Wirth and 'garner support' for the unnamed Republican nominee." *Id.* Thereafter, the Supreme Court vacated the Court of Appeals' opinion in *Colorado Republican* on other grounds. 518 U.S. 604 (1996). However, on the issue of "electioneering message" as the standard for content, the Supreme Court was silent.

The electioneering message/clearly identified candidate test was addressed in the context of the Commission's consideration of the reports submitted by the Audit staff in connection with

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A disbursement for a communication that depicts a clearly identified candidate and conveys an electioneering message will be an expenditure subject to the limits of 2 U.S.C. 441a(d) if the communication results from coordination between RPNM and the Republican candidate. Advisory Opinion 1985-14; see also Advisory Opinion 1984-15 and *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, __U.S. ___, 116 S. Ct. 2309, 2315-2319 (1996) (where the Court concluded that expenditures by a political party are not presumed to be coordinated with the party's candidate, and that the limitations of 2 U.S.C. 441a(d) would apply only to expenditures that are coordinated with the candidate).

AO 1998-9 at 4 (footnote omitted).

the primary and general election campaigns of the 1996 Presidential campaign committees of the two major party candidates. The Audit Division relied on the electioneering message/clearly identified candidate test in concluding that the advertisement campaigns funded by the DNC and the RNC were in-kind contributions to the Primary Committee and the Dole/Kemp '96, Inc. (General) Committee, and that these committees therefore exceeded the applicable expenditure limitations. The Audit Division therefore recommended that Commission make a repayment determination with respect to these committees. In rejecting this recommendation, a majority of the Commission issued a Statement of Reasons[20] explicitly repudiating the electioneering message/clearly identified candidate test. *Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, David M. Mason and, Karl J. Sandstrom On The Audits of "Dole for President Committee, Inc." (Primary), "Clinton/Gore '96 Primary Committee, Inc.," "Dole/Kemp '96, Inc." (General), "Clinton/Gore '96 General Committee, Inc.," and "Clinton/Gore '96 General Election Legal and Compliance Fund"* (June 24, 1999)("Statement of Reasons").

In rejecting the test, the Statement of Reasons states that "the threshold problem with the 'electioneering message' standard . . . is that it is not a rule. It is only a shorthand phrase that purports to describe the Commission's reasoning in two advisory opinions." Statement of Reasons at 3. The Statement of Reasons explains that "the Commission may not use advisory opinions as a substitute for rulemaking." *Id.* According to the Statement of Reasons, the electioneering message standard is not a duly promulgated rule, but only a reference to an interpretation of certain advisory opinions, and therefore cannot be imposed on the regulated

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[20] While this document was entitled a "Statement of Reasons," it is distinguishable from a statement of reasons issued pursuant to 11 C.F.R. §§ 9007.2(c)(3) or 9038.2(c)(3) since it was not issued after the administrative review stage and was not issued in support for a repayment determination.

community. *Id.* at 2-4. Likewise, the only persons within the regulated community entitled to rely on the standard are the persons involved in the matters discussed in the opinion or in any materially indistinguishable activity. *Id.* at 3. The Statement of Reasons further declares that, in the absence of controlling regulations or authoritative interpretations of the courts, the appropriate enforcement standard is "the natural dictate of the language of the statute itself." *Id.* at 2 (footnote omitted); *cf.* Concurrence in Advisory Opinion 1999-11 [Commissioners Elliott, Mason and Wold] (August 16, 1999).[21] In light of this Statement of Reasons, it appears that the electioneering message/clearly identified candidate test has no application in evaluating whether the advertisements at issue should be treated as contributions to the Primary Committee.

Accordingly, if a disbursement for communications is made for the purpose of influencing the election of a candidate, and is made in cooperation with, or at the direction of, that candidate or that candidate's campaign staff, the disbursement is an expenditure by the person making the disbursement and an in-kind contribution to the candidate.

C. Excessive And Prohibited Contributions

The Act prohibits multi-candidate political committees from making contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $5,000. 2 U.S.C. § 441a(a)(2)(A). No candidate or political committee shall knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f).

Corporations and labor unions cannot make contributions in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.2(a), (b). A political committee that accepts

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[21] Beyond the "threshold problem" that the electioneering message test is not a properly enacted rule, the Commission also found that the standard suffers from substantive infirmities of vagueness and overbreadth. Statement of Reasons at 4-6.

contributions from corporations and/or labor unions for permissible purposes must establish separate accounts or committees for the receipt of federal and non-federal funds. 11 C.F.R. § 102.5(a). A political committee that maintains both federal and non-federal accounts shall make disbursements for federal elections from its federal account only. 11 C.F.R. § 102.5(a)(1)(i); *see also Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 616 (1996) (plurality op.) ("Unregulated soft money contributions may not be used to influence a federal campaign").

An expenditure is made on behalf of a publicly-funded candidate, and thus subject to the expenditure limitation, if it is made by: (1) an authorized committee or any other agent of the candidate for purpose of making any expenditure; or (2) any person authorized or requested by the candidate, an authorized committee of the candidate or an agent of the candidate to make the expenditure. 2 U.S.C. § 441a(b)(2)(B).

D. Reporting Requirements

Each treasurer of a political committee shall file reports of its receipts and disbursements. 2 U.S.C. § 434(a)(1). Each report shall disclose for the appropriate reporting period all receipts, including all contributions received from political party committees. 2 U.S.C. § 434(b)(2)(C). Political committees other than authorized committees shall also disclose for the appropriate reporting period all disbursements, including contributions made to other political committees, as well as expenditures by national committees in connection with the general election campaigns of candidates for federal office. 2 U.S.C. §§ 434(b)(4)(H)(i) and (iv). Each in-kind contribution shall be reported as both a contribution and an expenditure. 11 C.F.R. §§ 104.13(a)(1) and (2); 2 U.S.C. § 434(b)(4)(G). Moreover, if a political committee is required to allocate disbursements

between federal and non-federal funds, the treasurer must report the appropriate allocation ratios. 11 C.F.R. § 104.10(b)(1).

E. Attribution Of Expenditures Between The Primary And The General Election

The Commission promulgated 11 C.F.R. § 9034.4(e) to establish a "bright line" cut-off date between primary and general election expenses "with regard to certain specific types of expenditures that may benefit both the primary and the general election." Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31,867 (June 16, 1995). The general rule is that goods or services used exclusively for the primary or general election campaign are allocable to that election. 11 C.F.R. § 9034.4(e)(1). Expenditures for media and other communications used for both the primary and general elections are attributed between the primary and general elections based upon whether the date of broadcast or publication is before or after the candidate's date of nomination. 11 C.F.R. § 9034.4(e)(6).[22]

F. Allocation

A political committee that finances political activity in connection with both federal and non-federal elections shall segregate funds used for federal elections from funds used for non-federal elections. 11 C.F.R. § 102.5(a)(1). If a political committee makes disbursements in connection with both federal and non-federal elections, it must allocate those disbursements between federal and non-federal funds. 11 C.F.R. § 106.5(a). Allocable disbursements include

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[22] In adopting the rule, the Commission recognized that the application of the rules could result in the attribution of some primary-related expenditures to the general election expenditure limitations and *vice versa*, but reasoned that "these differences should balance themselves out over the course of a lengthy campaign." 60 Fed. Reg. 31,867 (June 16, 1995). The Commission has promulgated regulations based on the timing of the contribution in other contexts, such as the designation of contributions to the primary or general election. *See, e.g.*, 11 C.F.R. §§ 110.2(b)(2)(ii) and 102.9(e). While 11 C.F.R. § 9034.4(e) does not explicitly discuss national party committees, the regulation applies to a publicly financed candidate's expenditures, which include expenditures in the form of in-kind contributions.

administrative expenses not attributable to a clearly identified candidate, and generic activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 11 C.F.R. §§ 106.5(a)(2)(i) and 106.5(a)(2)(iv).

In presidential election years, national party committees shall allocate at least 65% of their administrative and generic voter drive expenses to their federal accounts. 11 C.F.R. § 106.5(b)(2)(i). This allocation is "intended to reflect the national party committees' primary focus on presidential and other federal candidates and elections, while still recognizing that such committees also participate in party-building activities at state and local levels . . . ." Explanation and Justification for 11 C.F.R. § 106.5(b), 55 *Fed. Reg.* 26,063, 26,063 (June 26, 1990). In non-presidential election years, national party committees shall allocate at least 60% of their administrative and generic voter drive expenses to their federal accounts. 11 C.F.R. § 106.5(b)(2)(ii).

IV. FACTS AND ANALYSIS

A. Overview

With respect to the Complaint in MUR 4713, it appears that the majority of the claims are not legally sufficient. With the exception of the allegation that the DNC, President Clinton and the Primary Committee coordinated a DNC-funded media campaign for the purpose of promoting President Clinton's candidacy, the claims are not supported by a clear and concise recitation of factual allegations which describe violations of a statute or regulation over which the Commission has jurisdiction. *See* 11 C.F.R. § 111.4(d)(3). For example, Dr. Fulani's complaint does not allege facts which, if true, would support her claim that the repayment determination made in connection with Dr. Fulani's 1992 presidential campaign was issued

because the respondents manipulated the Commission. Furthermore, even if the complaint did set forth a recitation of factual allegations describing such manipulation, the complaint does not set forth any basis for the Commission to exercise jurisdiction over that claim, and it appears that the Commission has no authority over such a claim.

The claim that the respondents and other similarly situated persons have, for 25 years, conspired to influence the Commission to use selective enforcement of federal election laws to deter "insurgent candidates" does not appear to be supported by a recitation of supporting factual allegations. Furthermore, a claim of a conspiracy to improperly manipulate the Commission would appear to be a matter outside the authority of the Commission. Likewise, the claim that the audits and repayment determinations against Fulani '92 were the product of a conspiracy to manipulate the Commission is neither supported by allegations of fact, nor a matter over which the Commission has jurisdiction. Finally, Dr. Fulani's complaint fails to describe how the respondents expended soft money in furtherance of this conspiracy.[23]

Even if the Commission were to conclude that these claims are adequately supported by factual allegations which describe violations of a statute or regulation over which it has authority, these claims would still be insufficient because the complaint fails to identify the source of information which gives rise to the complainant's belief in the truth of those statements which are not based on the complainant's personal knowledge. Dr. Fulani's verification, set forth at the end of the complaint, states that she knows the contents of the complaint to be true "except the

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[23] The Commission does have jurisdiction over the underlying audit and enforcement activities which Dr. Fulani contends were the result of a conspiracy to manipulate the Commission. The Commission properly exercised its authority with respect to the statutorily mandated audit under 26 U.S.C. § 9038 and its investigation of Dr. Fulani's use of matching funds pursuant to 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3. *See Lenora B. Fulani for President v. FEC*, No. 97-1466 (D.C. Cir. filed June 23, 1998). Thus, the opinion of this Office is that the Commission need not, and should not, consider (or reconsider) its actions related to Fulani '92, which underlie Dr. Fulani's conspiracy claim in MUR 4713.

matters therein stated to be alleged on information and belief . . . ." With the exception of the claim that the DNC, President Clinton and the Primary Committee coordinated a DNC-funded media campaign for the purpose of promoting President Clinton's candidacy, all of the claims against the respondents are alleged on the basis of information and belief. *See* Attachment 2 at ¶¶ 8-11, 16, 18. Dr. Fulani's complaint thus fails to identify the information upon which Dr. Fulani has relied in making her accusation that the Commission is in fact acting at the direction of a conspiracy against her and other "insurgent" candidates. Moreover, this Office is aware of no information which would support Dr. Fulani's conspiracy theory. Absent identification of the source of information which gives rise to Dr. Fulani's belief in the truth of her allegations, the claims based on such "information and belief" appear to be insufficient. 11 C.F.R. § 111.4(d)(2).

The allegation in MUR 4713 that the DNC, President Clinton and the Primary Committee coordinated a DNC-funded media campaign for the purpose of promoting President Clinton's candidacy is substantively identical to allegations made in MURs 4407 and 4544, and the issue referred to this Office in AR 99-15. From the allegations set forth in the Common Cause Complaint, and information generated in the investigation in MURs 4407 and 4544 and in the audit of the Primary Committee, it appears that the DNC paid, directly and indirectly, for 36 advertisements which aired from August 16, 1995 to August 6, 1996.[24] It further appears that

[24] As noted at page 13, the Primary Committee and Mr. Ickes argue that "Commission procedures and precedents preclude the Common Cause letter from being considered a complaint against the respondents unless filed by Common Cause itself." This Office notes that the regulations not only permit, but require a complainant to identify the information relied upon in making the complaint. 11 C.F.R. § 111.4(d)(3), (4). The issue whether the Commission could consider the Common Cause complaint, in and of itself, a complaint to the Commission is irrelevant. The opinion of this Office is that the Commission can consider the complaint which Ms. Fulani filed with the Commission, to the extent that it meets the requirements of 11 C.F.R. § 111.4(d). This Office thus does not view the Common Cause complaint as a "complaint" within the meaning of 11 C.F.R. § 111.4. Rather, the Common Cause complaint is a supporting document appended to Ms. Fulani's complaint before the Commission.

President Clinton and campaign officials directed and actively participated in the development of the advertising campaign, and that the purpose of the advertising campaign was to influence the election of the candidate. Specifically, it appears that the timing, geographic focus and content of advertisements were calculated to further the candidate's re-election efforts.[25] The broadcast dates and titles of the advertisements are as follows:

Date	Advertisement Title
08/16/95 - 08/31/95	Protect, Moral
10/03/95 - 10/10/95	Emma
10/11/95 - 10/17/95	Emma
10/19/95 - 10/25/95	Sand
10/26/95 - 11/01/95	Sand
11/02/95 - 11/10/95	Important, Veto, Families, Threaten
11/10/95 - 11/16/95	Firm, Presidents, Constitution
11/17/95 - 11/30/95	Firm
12/05/95 - 12/14/95	People
12/16/95 - 12/22/95	Children
01/10/96 - 01/16/96	Slash
01/18/96 - 01/24/96	Slash, Table
01/26/96 - 02/01/96	Table
02/13/96 - 02/19/96	Challenges
02/20/96 - 02/27/96	Challenges
02/28/96 - 03/05/96	Challenges
03/07/96 - 03/13/96	Welfare, Victims
03/14/96 - 03/20/96	Welfare, Victims
03/21/96 - 03/27/96	Welfare, Victims
03/29/96 - 04/03/96	No, Stop, Maine
04/05/96 - 04/11/96	Proof, Stop, Facts
04/12/96 - 04/18/96	Proof, Stop, Facts, Supports, Photo
04/20/96 - 04/26/96	Proof, Stop, Facts, Supports, Photo
04/27/96 - 05/03/96	Proof, Background, Facts, Help
05/05/96 - 05/10/96	Finish, Help, Background
05/11/96 - 05/17/96	Finish, Help, Background
05/18/96 - 05/24/96	Finish, Help, Same
05/25/96 - 05/31/96	Help, Same

[25] The advertisements addressed in this matter were also at issue in the audit of the Primary Committee, where the Commission voted to reject the repayment determinations relating to these advertisements. However, as was noted at that time, that determination was related to repayments, and not violations of the Federal Election Campaign Act, as amended. *See Reagan Bush Committee v. FEC*, 525 F. Supp. 1330, 1337 (D.D.C. 1981) (audit process is on track that is different from enforcement process); *see also Kennedy for President v. FEC*, 734 F.2d 1558, 1560 n.1 (D.C. Cir. 1984).

06/01/96 - 06/07/96	Side, Same
06/08/96 - 06/11/96	Side, Same
06/12/96 - 06/18/96	Dreams, Defends
06/19/96 - 06/25/96	Defends
06/26/96 - 07/02/96	Values, Another, Enough
07/03/96 - 07/09/96	Values, Another
07/10/96 - 07/16/96	Enough
07/17/96 - 07/23/96	Enough
07/18/96 - 07/19/96	Enough (California flight)
07/24/96 - 07/30/96	Economy
07/31/96 - 08/06/96	Economy

Attachment 11.[26]

It appears that the DNC spent approximately $44,302,854.52 for the advertisements at issue. *Id.* Of this amount, it appears that approximately $1,565,985.65 was paid by the DNC directly, and $42,736,868.87 was paid indirectly through transfers to the accounts of various state committees.

By paying for the advertisements through the state committee accounts, state allocation ratios, which allow a greater percentage of funds for administrative expenses to be paid from non-federal accounts, could be used. *See* 11 C.F.R. § 106.5(d). It appears that, even prior to the media campaign at issue in this matter, the DNC had established a system of transferring to state committees funds for media airtime purchases. An internal DNC memorandum, dated August 7, 1995, states:

> I have attached a list of checks we have received from Mandy Grunwald's firm for media refunds from last fall's campaigns. The amounts represent funds which we sent to state parties for them to then turn around and send back to Mandy for media buys. The refunds are for unplaced buys. The refunds are really ours since we did not intend to make a contribution to the various state parties when we sent them the money. In other words the state parties were simply a conduit for the buys so we could get a more favorable Hard/Soft split.

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[26] Attachment 11 is a summary chart prepared by this Office based on data generated during the audit.

Attachment 12. Similarly, in an August 17, 1995 memorandum regarding the "August DNC time-buy," Harold Ickes stated that "[DNC Chairman Fowler] informed me . . . that it would be possible to save $150,000-175,000 in 'hard' money if the spots were purchased by individual state democratic committees in a swap arrangement with the DNC rather than being purchased directly by the DNC . . . ."[27] Attachment 13. It therefore appears that the DNC retained control over the funds that were transferred through state committee accounts for the payment of media expenses.

During the advertisement campaign, the DNC developed a form letter which, on its face, states that the DNC is "proposing" that the state party "sponsor" a particular advertisement using funds provided by the DNC, and suggests that the decision whether to run the advertisement rests with the state committee. Attachments 14-25. However, it appears that these letters were a matter of form, and, as a matter of fact, the state committees simply allowed the DNC to process the payments through state committee accounts. Specifically, it appears that the letters generally were mailed, via overnight delivery, such that the letter should arrive on the day on which the advertisement was scheduled to begin running. *Id.* In some cases, it appears that the notification letter was sent via facsimile transmission.[28] Attachments 15-16. It therefore appears that the state committees may have had little real opportunity to review and consider the advertisements prior to broadcast.

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[27] During the events at issue, Donald Fowler and Senator Christopher Dodd were Co-chairmen of the DNC, and Harold Ickes was the White House Deputy Chief of Staff for Policy and Political Affairs.

[28] It also appears that the DNC held a teleconference with representatives of the state committees prior to mailing the letters for the advertisement flight beginning October 3, 1995. Attachment 14.

A memorandum from Harold Ickes to Donald Fowler, dated November 21, 1995, likewise appears to suggest that the state committees were expected to mechanically accommodate the transfer of DNC funds through their accounts:

> . . . various Democratic state parties owed [SKO] approximately $2.4 million for television time buys placed through the state parties for the period 11 October through 30 November. I don't know what the legal ramifications are, but [SKO] is not a bank for the DNC. I trust that you will take immediate steps to rectify this situation.

Attachment 26.

B. The Expenditures For The Advertisements Were Made In Cooperation, Consultation, Or Concert, With, Or At The Request Or Suggestion Of President Clinton And The Primary Committee

It appears that the advertisements funded by the DNC and campaign advertisements funded by the Primary Committee were produced and placed for broadcast by the same team of media consultants (the "Media Team"), and that this Media Team in fact planned and implemented these nominally separate advertisements as a single, integrated media campaign.[29] It further appears that this media campaign was planned at weekly creative meetings held at the White House, and that an integrated budget for both sets of advertisements was planned and controlled by Harold Ickes.

Specifically, meeting agendas indicate that no later than March of 1995, Dick Morris began attending campaign strategy meetings with the candidate on a regular basis.

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[29] It appears that the principal individual members of the Media Team included Dick Morris, Robert Squier (SKO), William Knapp (SKO), Hank Sheinkopf, Marius Penczner (Marius Penczner Productions), Mark Penn (Penn & Schoen), Doug Schoen (Penn & Schoen). It appears that the Media Team incorporated as the November 5 Group on February 5, 1996.

Attachment 27.[30] It appears that by February or March of 1995, Harold Ickes was also attending these weekly meetings.[31]

In a memorandum dated April 12, 1995, DNC counsel advised Harold Ickes that the DNC and the Primary Committee could properly employ "joint polls and common consultants, and other forms of cooperation by DNC exclusively with the re-elect (to the exclusion of any challenger(s)) . . . ." Attachment 28. Counsel opined that such "cooperation" was proper because:

> 1. DNC has always begun to support and work for the nominee as soon as it was clear that the race was over. That situation exists right now. Non-frivolous figures may seek the nomination but there is no doubt about the outcome. The DNC cannot afford to refrain from laying the groundwork for a successful general election.
>
> 2. The President is the leader of the Party and the DNC has the right and obligation to support him in that role.
>
> 3. The DNC/Democratic Party has an institutional stake in the success of the Presidency because it affects the election of Democrats at every level in 1996.
>
> 4. There is no legal impediment to the above approach. The DNC charter requires neutrality but this language –
>
> - Applies by its terms only to the conduct of the delegate selection process itself
> - Contemplated a contested nomination for an open seat – not an incumbent President

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[30] The earliest meeting agenda appended to this Report is dated March 2, 1995. However, copies of meeting agendas are published as an appendix to the second edition of *Behind the Oval Office* (authored by Dick Morris), and the earliest agenda in that book is for a meeting on February 17, 1995.

This Office notes that the numerous meeting agendas attached to this Report are complete copies of documents produced by Dick Morris in response to a Commission subpoena in MURs 4407 and 4544. Although this Office has attached the full document produced by Mr. Morris, in many instances pages appear to be missing from the document.

[31] In his deposition before the Senate Committee on Governmental Affairs, in the matter of the Investigation of Illegal Or Improper Activities In Connection With the 1996 Federal Election Campaign, Harold Ickes testified that he began attending the weekly meetings in February or March of 1995.

- Has never prevented the DNC from beginning work and planning for general election in cooperation with nominee (subject to election law restraints) as soon as nomination was effectively locked up – have not waited until Convention.

Id. Counsel's opinion also set forth that "DNC and re-elect each to have their own contracts for media consultant(s), if any, to be named[.]" *Id.*

On or about June 22, 1995, the Primary Committee apparently entered into an agreement with SKO, Hank Sheinkopf and Marius Penczner Productions ("MPP") for "campaign services." Attachment 29. The contract provided that all materials produced pursuant to the agreement were the property of the Primary Committee. *Id.* Compensation was fixed at 15% of the media buys for the first $2,400,000 of media time purchased by the Primary Committee. *Id.* However, the commission for any subsequent time buys was left open to future agreement.[32] *Id.* The agreement was nonexclusive, and the Primary Committee retained the right to retain other persons to perform the same services as those described in the agreement. *Id.*

It appears that the weekly meeting agendas began to include DNC-funded media as an item for discussion no later than June 21, 1995. Attachment 30 at 2. Entries related to "paid media" in agendas for subsequent meetings appear to reflect a strategy of using all paid media, whether funded by the DNC or the Primary Committee, to achieve the goal of boosting the candidate's approval ratings in public opinion polls. *E.g.*, Attachments 49, 51.

In a memorandum dated August 14, 1995, Harold Ickes advised the candidate that one of the considerations relevant to deciding whether or not to accept federal matching funds was the "[s]ources of funding substantial media purchase beginning September 1995 in the $5 - $10 million range . . . ." Attachment 31. The sources described by Mr. Ickes were:

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[32] The agreement also provided for the payment of certain costs and the reimbursement of certain expenses.

(i) the DNC,

(ii) coalition of outside groups, including unions, DCCC, DSCC, etc., or

(iii) the Re-elect[.]

Id.

It also appears that, on or about October 20, 1995, Harold Ickes requested that the DNC open a separate bank account for its media fund, and that the DNC did so. Attachment 32.

It further appears that, as of the beginning of November 1995, the broadcast of the DNC-funded advertisements was being authorized by Harold Ickes without prior consultation with either of the co-chairs of the DNC. A November 2, 1995 memorandum from David Gillette to Senator Dodd recommends that he raise the issue of the DNC advertisements with Donald Fowler, Harold Ickes and Doug Sosnik, explaining that:

> You may want to request from Harold that you and Don be consulted as decisions on what [DNC] ads are to be run are made. You are put in a position of defending and discussing the ads but are not included in any way in the process. It would be helpful if you could be consulted either by Ickes, Morris or Squier as decisions are made.[33]

Attachment 33.

Mr. Ickes sent a memorandum to the DNC, dated November 27, 1995, requesting confirmation of the amounts raised by the DNC for its media fund. Attachment 34. On or about January 15, 1996, Mr. Ickes sent a memorandum to Mr. Fowler in which Mr. Ickes indicated that he intended to review the DNC's entire 1996 budget. Attachment 35. Mr. Ickes' memorandum set forth that:

> Given the large amount of funds to be raised prior to the end of October this year for the DNC's operating budget, its media budget, its coordinated

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[33] During the events at issue, Doug Sosnik was the Assistant to the President and Director of Political affairs within the White House Office of Political Affairs, and David Gillette was the DNC Staff Director to Chairman Dodd.

> campaign budget, the 441(a)(d) [sic] monies, the GELAC fund and other fundraising activities, it appears that the $56 million proposed budget for the DNC, may have to be substantially reduced. In order to facilitate a more discrete and rational review of the proposed budget, I request that you submit to me, by close of business Wednesday 17 January, a detailed description of the component parts of each of the 38 line items in the DNC 1996 budget summary, dated 20 December 1995. If one or more of the component parts for a particular line item involves a substantial amount, I request that a separate analysis of the component part(s) be provided as well.
>
> I would appreciate as much detail as possible about the 6 line items (6-11) for "direct White House support" so I can more easily determine what cuts, if any, can be made in those amounts.
>
> I also request that you submit a list of the current employees of the DNC, grouped by department, with their date of hire and their annualized rate of pay.
>
> Finally, I request a written description of any arrangement (verbal or otherwise) the DNC may have with any state party regarding the amount of funds to be retained by the state party, or related entity, with respect to any DNC related fundraising that occurs in the state. . . .

Id.

It appears that, on or about January 30, 1996, Harold Ickes and Doug Sosnik met with Senator Dodd and Donald Fowler to discuss the DNC budget. A memorandum from David Gillette to Senator Dodd, dated January 30, 1996, reflects the impression that Harold Ickes' influence over the DNC budget risked making the DNC "singularly serve as a source of funds for the reelect." Attachment 36. The memorandum sets forth that:

> At 2:30 pm you are scheduled to attend a meeting with Don Fowler, Harold Ickes and Doug Sosnik in order to discuss the DNC budget and plans for the future. The agenda may evolve into a very specific discussion about how the budget can be cut, focusing both on personnel and on program. In the most extreme case, the DNC could become a "bank" to fund the year's media buy, the coordinated campaign and the research operation. . . .
>
> Harold had informed us that the media budget is probably too low but we have not yet received an estimate of how much they want to spend. Our original figure was based on about $1.4 million per week for five months (January-March, September-October). . . .

> I believe the DNC is likely to be told to spend more money on T.V. sometime this Spring. Even without additional T.V. spending, we will probably need to find $10-$20 million in savings. By cutting the DNC drastically, basically having it function as a bank – funding research, television, finance, a bare-bones communications office, a campaign division that moves money to coordinated campaigns and acts merely as a liaison to states, the DNC Office of the Secretary and the Chair's offices – we could possibly save $10-12 million. That would entail an end to the training program, and end to constituent outreach, the laying-off of 40-50 staff people and most of our consultants. To save more money, the coordinated campaign, now budgeted as $25 million, would possibly need to be cut.
>
> Senator, cuts of this nature would change the shape and mission of the DNC. The new DNC would almost singularly serve as a source of funds for the reelect and ignore the other elements of the Democratic Party. The enhanced communications effort would come to a halt, political outreach (blast-faxing, work with ethnic groups and media and continuing outreach to elected officials) would be drastically cut back. In short, money to bolster the President's reelection may be the best use of funds, nonetheless, it will not come cheap. . . .

Id. at 1-2.

It also appears that on March 14, 1996, Harold Ickes met with representatives of the Media Team for the purpose of continuing the negotiation of the terms and conditions which would apply to the Media Team's activities on behalf of both the Primary Committee and the DNC. Attachment 37. At this point, the Media Team had already broadcast 18 flights of DNC-funded advertisements, at an approximate cost of $19,045315.44. *See* Attachment 11.

On or about March 18, 1996, Mr. Ickes submitted a memorandum to the candidate summarizing the March 14, 1996 meeting. Attachment 37. The subject of the memorandum is described as the "Contract between the C/G '96 Re-elect and The Media Team."[34] *Id.* However, the text of the memorandum suggests that the negotiations, at that point, contemplate that

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[34] As used in various documents discussed in this Report, "C/G '96 Re-elect" appears to refer to the Primary Committee, although in some contexts the title possibly refers to the Primary and General Committees collectively.

commissions for media time buys will be paid on a sliding scale, based on the total amounts spent by both the Primary Committee and by the DNC.[35] *Id.* at 1-2.

On or about March 25, 1996, Harold Ickes submitted a memorandum to the candidate regarding "Contract with the consultants (The Media Team) regarding polling, production of media and commission on airtime purchased[.]" Attachment 38. Therein, Mr. Ickes described a "proposal . . . for a 'comprehensive agreement' for both the Re-elect and the DNC . . . ," but added, in a parenthetical statement, that "[t]here would be a separate contract between the Team and the DNC and between the Team and the Re-elect." *Id.* at 1. As was the case with the March 18, 1996 memorandum, this memorandum suggests that commissions for media time buys would be paid on a sliding scale based on the total amounts spent by both the Primary Committee and the DNC. *Id.* at 1-2.

A memorandum dated April 17, 1996 memorializes that on or about April 15, 1996, DNC Chairman Fowler apparently agreed that all DNC expenditures, including expenditures from the DNC "media budget" were "subject to the prior approval of the White House" (emphasis in original). Attachment 39. It further appears that on April 17, 1996, the first versions of forms, whereby such prior White House authorization could be communicated to SKO and Penn & Schoen, were drafted. Attachment 40-41. From May to August of 1996, these forms, signed by Harold Ickes or Doug Sosnik, apparently were used to authorize Penn & Schoen to conduct polls, for SKO to produce animatics[36] and television advertisements, and for SKO to purchase media air time. *Id.* It appears that the these authorizations applied to both Primary Committee and DNC-funded activities. *Id.*

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[35] The memorandum also indicates that Dick Morris, pursuant to then-current agreements, was receiving a monthly retainer, but does not indicate whether the DNC or the Primary Committee paid that retainer.

[36] It appears that "animatics" were draft versions of advertisements which were tested using focus groups.

On or about June 13, 1996, Harold Ickes apparently directed SKO to provide to him media budgets for both the DNC and the Primary Committee for the period from June 17 to August 29, 1996. Attachment 42.

It further appears that as of June 24, 1996, negotiations between the Media Team and the White House had not yet yielded a final agreement. At this point, the Media Team had already broadcast 32 flights of DNC-funded advertisements, at a cost of approximately $37,342,716.93. *See* Attachment 11. In a memorandum to the candidate dated June 24, 1996, Harold Ickes set forth a history of the media buys already placed and recommendations for terms to be negotiated with the Media Team. Attachment 43. The memorandum apparently refers to both Primary Committee and DNC-funded advertisements.

On or about June 26, 1996, Harold Ickes sent a memorandum to the candidate regarding "[r]evised estimated DNC 'budgets' as of 19 June 1996." Attachment 44. The memorandum includes a line item for the media fund, budgeted at $36.8 million. *Id.* at 4. A footnote to this item states:

> [$]21.8 million was originally budgeted for DNC media for January - May 1996. Of that, only $18.5 million was spent. Originally no DNC time buy was budgeted for June - August. Subsequently, $16 Million was added to the total time buy budget (DNC and C/G) for June - August 1996 (first $8 million, then an additional $7 million, and recently an additional $1 million). As of 6/17/96, only $7.1 million remains in the C/G Re-elect for media, but since $2.0 million will have to be re-allocated for the Convention and possible train trip, that difference will have to be picked up by the DNC, thereby bringing this total to $363.8 million for the DNC for the period January - August.

Id. This footnote appears to suggest that the DNC media fund was treated as a supplement to the Primary and General Committees' media budgets.

Likewise, memorandum from Dick Morris associated with the weekly meeting of February 22, 1996, anticipates the following budget: "Total Clinton Gore Money through May

28: $2.5 mil. . . . [u]nless Alexander is nominated and we cannot use DNC money to attack him. . . . If Dole is nominated, we need no additional CG money for media before May 28 since we can attack him with DNC money[.]" Attachment 45 at 2.[37] This statement appears to indicate that DNC funds were used to fund media designed to "attack" Senator Dole because he was the presumptive Republican nominee for President.[38]

Based on the foregoing, there is reason to believe that the DNC expenditures for these advertisements were made "in cooperation, consultation, or concert, with, or at the request or suggestion of . . ." President Clinton and the Primary Committee, within the meaning of 2 U.S.C. § 441a(a)(7)(B)(i).[39]

C. The Expenditures For The Advertisements Were Made For The Purpose Of Influencing The Nomination And Election Of President Clinton

It appears that the advertisements which were funded by the DNC each had the purpose of influencing the nomination and election of President Clinton.[40] The advertisements all appear to champion the candidate's agenda on various campaign issues, and many also appear to denigrate Senator Dole's stand on those campaign issues. Attachment 47. Furthermore, it appears that the

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37 This document appears to have been submitted by Dick Morris in addition to a meeting agenda. *See* Attachment 46.

38 It appears that by March 26, 1996, Senator Dole had sufficient delegates to claim the Republican nomination.

39 Although the recent *Christian Coalition* decision only addresses "coordination as it applies to expressive coordinated expenditures by corporations . . . ," Opinion and Order at 99-100, it appears that the coordination in this matter meets the standard set out in that decision. First, in this matter it appears that there is reason to believe that the expenditures for media were made at the "request or suggestion" of the Primary Committee in that it appears that no expenditure was made without Harold Ickes' approval. *Id.* at 101. In the alternative, the facts also show that there is reason to believe that there was substantial discussion and negotiation between the DNC and the Primary Committee with respect to the content, timing and location of the media campaign. *See id.*

40 During the audits of the Primary Committee, the DNC provided videotapes of all of the advertisements except Important, Veto, Constitution and Maine. These videotapes are available for Commission review and are in the care of this Office. In addition, it appears to this Office that some of the titles, such as Another and Enough, refer to identical advertisements.

Media Team that planned the advertising campaign selected the issues and themes addressed by the advertisements and the geographic locations for the broadcast of the advertisements, based on a calculated strategy to move voter preference in favor President Clinton and against Senator Dole, the presumptive Republican nominee, in states targeted for electoral votes in the general election and for their importance in the primaries.

Specifically, it appears that the Media Team developed a list of "battleground" states for the general election. The agenda for the May 4, 1995 strategy meeting sets forth that the Media Team will develop a media market list based on margin of defeat, chances of carrying state, electoral vote of state and cost of advertising. Attachment 48. It further appears that the DNC-funded advertisements were produced and broadcast with the purpose of improving President Clinton's popularity in these battleground states. For example, in an agenda for a strategy meeting on July 26, 1995, Dick Morris recommended a "[p]ressure campaign aimed at Swing Republican Senators on medicare during recess . . . ," and specifically suggested:

> Target recess paid media, funded by DNC, to aim at key moderate Republican Senators.
>
> a. Hit small states with moderate Republican Senators
>
> Ashcroft, Missouri
> Bond, Missouri
> Chaffee, RI
> Cohen, Me
> Snow, Me
> Dominici, NM
> Hatfield, Oregon
> Packwood, Oregon
> Jeffords, Vt
> Kasslebaum, Kansas
> Murkowski, Alaska [crossed out]
> Stevens, Alaska [crossed out]
> Bennett, Utah
> +Tenn [marginalia]
> +Col [marginalia]

+SD - Pressler [marginalia]

b. 1,200 Points in these states would cost $500,000

c. Use DNC to pay for it, we control production

d. In 1983, RNC did ads on inflation in March & July[.][41]

Attachment 49. However, by the meeting of August 3, 1995, Mr. Morris' proposed strategy apparently had evolved, and now called for a second wave of advertising broadcast in states identified as "swing states" for the Presidential election. The August 3, 1995, meeting agenda sets forth the following strategy:

1. Step one: Ads

   a. run ads in moderate Republican states to pry loose swing Senators - $700,000

      1. Iowa, Des Moines Grassley
      2. Kansas, Wichita, Kassebaum
      3. Maine, Portland, Snow, Cohen
      4. Missouri, Spring, Col, St. Joe, Bond, Ashcroft
      5. NY, upstate small, D'Amato
      6. NM, Alb., Domenici
      7. Oregon, Port., Packwood, Hatfield
      8. R.I., Providence, Chafee
      9. S.D., Sioux Falls, Pressler
      10. Tenn, Nashville, Thompson, Frist
      11. Vt. Burlington, Jeffords

2. Step One [sic]: Free Media

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[41] Dick Morris' suggestion to "[u]se DNC to pay for it, we control production" appears to reflect the actual relationship which developed between the White House and the DNC. An October 2, 1995 memorandum from David Gillette to Senator Dodd states:

> Attached is the script of the Medicare ad that is scheduled to go up either Tuesday evening or Wednesday. At the direction of the White House, the DNC will spend about $1.2 million on an ad buy that will roll in two waves. The first wave will include: KY, TN, OR, WA, and IA. The second wave will include AR, CA, ME, MI, MN, OH, WI, NY, and RI. As always, this information is current as of Monday morning and can change at any time.
>
> I have sent the tape by overnight mail and you will have it on Tuesday. I think that the ad is very weak. Nonetheless, the decision to go with it has been made by Dick Morris, Bob Squier and the President.

a. In N.H., have Ann Lewis start a pledge movement

b. publicize CBO scoring of managed care

1. hold their feet to fire so they can't score vouchers higher than they do now

3. Step Two: Paid Media

a. continue marginal republican senate ads

b. begin swing state ads

c. aim media at targeted seniors

cost of all three: $3.5 mil for 1,000 pts
likely cost will equal $5million for 1500 pts

d. ads which respond to republican answers and developments in political situation

e. goal: to raise the heat to such levels that Republicans

1. abandon their plan

2. try to postpone everything until Nov.

3. eventually feel the heat so much that they demand a quick resolution, a reconciliation on the President's terms, to lower their political heat

f. Splitting the Republicans

1. as pressure mounts on moderate senators and GOP generally they will split and blame each other

2. Gramm may open a populist front against Dole

3. Wilson, Alexander will hit Dole on medicare

4. eventually, Republicans will break into small groups, a la how we were on health care in August, 94[.]

Attachment 50.

It further appears that the first step was implemented during the period from August 16 to August 31, 1995, when the DNC funded the advertisements Protect and Moral which were

broadcast in ten of the eleven "moderate Republican states" identified in the August 3, 1995 meeting agenda (the advertisements did not run in Kansas), as well as four other states (Arkansas, Florida, Georgia and Maryland). Attachment 11.

The September 7, 1995 meeting agenda set forth data showing the impact of the advertisements and outlined a program for further DNC and Primary Committee funded advertisements. Attachment 51. The agenda proposed using advertising funded in whole or in part by the DNC for the purposes of "interven[ing] in Republican Primaries" and "hit[ting] Republican nominee." *Id.* The agenda specifically recommended advertisements stressing the candidate's commitment to a balanced budget, appropriations for education and the issue of Medicare. *Id.* The agenda also posed the question "[c]an we stop DNC from spending money on things other than our ads[?]" *Id.*

The agenda for September 25, 1995 similarly presents polling data related to the candidate's approval ratings and the likelihood of individuals to vote for President Clinton versus Senator Dole. Attachment 52. The memorandum then outlines a strategy to "[p]unch the message through over paid media" and argues that:

> . . . We need paid media to set up the battle in the public's mind – education, medicare, balanced budget
>
> a. while fight is in play and free media ratification is there
>
> b. with the repetition and simplicity only paid media can
>
> c. sets up the criteria for a win: education, environment, medicare – not tax cut size or capital gains or other NDD cuts[.]

Id. With respect to the cost of further advertising, the agenda contains the recommendation:

> a. immediately, to answer Republican ads: $300,000
>
> b. to get our point across to swing states: $1,200,000 per week

1. California, Oregon, Washington, Colorado, Missouri, Tennessee, Arkansas, Ohio, Illinois, Michigan, Wisconsin, Pennsylvania, 1/3 of N.J.[,] Florida, and Kentucky

2. also, to impact moderate Republican Senators: Rhode Island, Vermont, parts of NY, New Mexico, Iowa,

c. reaches GOP Senators and GOP congressmen[.]

Id.

The second wave of advertisements on the Medicare and budget issues appears to have been implemented during the period from October 3 to October 17, 1995, when the DNC-funded advertisement Emma was broadcast.

It appears that the Media Team credited the advertisements Protect, Moral and Emma with having improved President Clinton's approval polls over Senator Dole, and advocated further advertisements. The agenda for the October 11, 1995 weekly strategy meeting remarks that President Clinton's lead over Senator Dole has improved:

. . . Lead over Dole from 1 point on Sept 14 to 10 points on Oct 10

a. among independents went from 41-40 to 43-29

b. Our vote went from 44 to 46 in total sample – 4 to go!

Attachment 53. The agenda reports numerous other poll results comparing President Clinton against the Republicans or Senator Dole, and includes the observation that "VIRTUALLY ALL THE GROWTH WAS IN MARKETS WE ARE ADVERTISING IN. . . ." *Id.* (capitals in the original).

Likewise, the meeting agenda for October 25, 1995 emphasized the fact that the advertising is favorably influencing the public opinion toward President Clinton and against Senator Dole:

. . . POLLING DATA – CONTINUES UPWARD MOVEMENT

A. Clinton vote (vs Dole) up from 44 to 45 to 46 to 47 (now)

a. Margin over dole [sic] now 11 pts (up form 10 last poll)

1. where we are advertising, we are ahead by 14
. . . where we are not advertising, we are ahead by only 9

B. Clinton re-elect number from 38 to 40

C. Definite against Clinton from 37 to 35 to 32 to 33 (now)

D. Approval steady at 57% (but could be higher based on limited sample)[.]

Attachment 54.

It further appears that following these initial first and second "waves" of advertisements, the Media Team continued to use DNC-funded advertising to implement the strategies outlined in the September 7 and 25, 1995 meeting agendas. During the period from October 19, 1995 to April 26, 1996 (the date on which the President signed the final spending bill for fiscal year 1996), the DNC-funded advertisements Sand, Important, Veto, Families, Threaten, Firm, Presidents, Constitution, People, Children, Slash, Table, Challenges, Welfare, Victims, No, Stop, Maine, Proof, Facts, Supports and Photo were broadcast. Attachment 11. As outlined in the September 7 and 25, 1995 meeting agendas, these advertisements address the budget impasse and, in particular, the candidate's position that expenditures for Medicare, education and the environment must be protected from budget cuts. Attachment 47.

As the political battle over the federal budget wound down, the Media Team apparently continued to use DNC-funded media to promote President Clinton's candidacy. Beginning with the March 6, 1996 agenda, the weekly meeting agendas suggest a shift in the campaign's use of paid media away from addressing the budget debate, and toward making direct comparisons

between President Clinton and Senator Dole. The meeting agenda for March 6, 1996 ranks six "Dole Negatives" – "family issues," "Washington insider," "Medicare," "No New Ideas," "Flip Flops vs Always Conservative," and "Special Interest Captive" – and concludes that Dole's "[k]ey vulnerability is anti-family, all others move numbers unconvincingly[.]" Attachment 55. The April 1, 1996 meeting agenda describes a specific strategy to "contrast Clinton and Dole":

> . . . express Clinton's achievement, positioning and personal skills in the context of Dole's weakness'[:]
>
> a) Economy - contrast 91-91 recession with current prosperity
>
> 1) Show Dole's absence of economic program in 91 when the country needed it.
>
> b) Achievements: Stress how Dole opposed Clinton's achievements
>
> 1) Student loans, immunizations, family leave, Brady Bill
>
> c) Positioning on Budget: Express how Dole tried to destroy America's values by extremism in budget debate:
>
> 270B in Medicare cuts
> Medicare premium increase
> Entitlement for Medicaid Children
> Nursing homes
> Head start
> College scholarships
> Federal help for schools
> Environmental policies
> EPA enforcement
> Toxic waste
> Tax cut for working families
> Tuition deductibility
>
> d) Advocacy: Contrast Clinton and Dole differences over ongoing issues:
>
> V-chip
> Federal role in education and education standards
> Tobacco/smoking
> Minimum wage
> domestic violence
> 100,000 cops

Campaign finance reform

Attachment 56.

Consistent with the strategy outlined in these memoranda, the DNC appears to have funded advertisements which explicitly outlined policy differences between President Clinton and Senator Dole on these issues. The following table compares the campaign issues identified in the April 1, 1996 meeting agenda with statements set forth in DNC-funded advertisements that were broadcast for the first time between April 5 and August 6, 1996:

Themes to "contrast Clinton and Dole" *per* April 1, 1996 Meeting Agenda	**Statements contained in DNC-Funded Advertisements**
"family leave"	"FAMILY MEDICAL LEAVE SO MOTHERS CAN CARE FOR THEIR BABIES // PRESIDENT CLINTON GOT IT PASSED // REPUBLICANS OPPOSED IT" (Help) "THE PRESIDENT PASSES FAMILY LEAVE // DOLE GINGRICH VOTE NO" (Side)
"Brady Bill"	"60,000 FELONS AND FUGITIVES TRIED TO BUY HANDGUNS BUT COULDN'T BECAUSE PRESIDENT CLINTON PASSED THE BRADY BILL // FIVE DAY WAITS // BACKGROUND CHECKS // BUT DOLE AND GINGRICH VOTED NO" (Photo) "60,000 FELONS AND FUGITIVES TRIED TO BUY HANDGUNS BUT COULDN'T BECAUSE PRESIDENT CLINTON PASSED THE BRADY BILL // BACKGROUND CHECKS // DOLE AND GINGRICH VOTED NO AND NOW WANT TO REPEAL THE ASSAULT WEAPONS BAN" (Background)

"270B in Medicare cuts"	"THE PRESIDENT PROPOSES A BALANCED BUDGET PROTECTING MEDICARE . . . BUT DOLE IS VOTING NO" (Proof, Facts) "BUT WHEN DOLE AND GINGRICH INSISTED ON . . . HUGE CUTS IN MEDICARE . . . CLINTON VETOED IT // THE PRESIDENT'S PLAN[:] PRESERVE MEDICARE" (Supports) "THE PRESIDENT'S PLAN[:] PRESERVE MEDICARE" (Finish) "THE PRESIDENT'S PLAN[:] PROTECT MEDICARE REFORM" (Side) "DOLE GINGRICH'S LATEST PLAN INCLUDES . . . MEDICARE SLASHED" (Same) "THE DOLE GINGRICH BUDGET WOULD HAVE SLASHED MEDICARE 270,000,000,000 . . . THE PRESIDENT DEFENDED OUR VALUES // PROTECTED MEDICARE" (Defend) "PRESIDENT CLINTON PROTECTS MEDICARE // THE DOLE GINGRICH BUDGET TRIED TO CUT MEDICARE 270,000,000,000" (Values)
"Entitlement for Medicaid Children"	"DOLE GINGRICH'S LATEST PLAN . . . CHILDREN FACE HEALTHCARE CUTS" (Same)
"Student loans" "Head start"	"HEADSTART STUDENT LOANS . . . DOLE GINGRICH WANTED THEM CUT // NOW THEY'RE SAFE // PROTECTED IN THE 96 BUDGET BECAUSE THE PRESIDENT STOOD FIRM" (Finish) "AMERICA'S VALUES // HEADSTART STUDENT LOANS . . . PROTECTED IN THE BUDGET AGREEMENT // THE PRESIDENT STOOD FIRM" (Same)

"College scholarships"	"THE DOLE GINGRICH BUDGET WOULD HAVE . . . CUT COLLEGE SCHOLARSHIPS // THE PRESIDENT DEFENDED OUR VALUES . . .FREE HELP // ADULTS GO BACK TO SCHOOL" (Defend) "THE DOLE GINGRICH BUDGET TRIED TO SLASH COLLEGE SCHOLARSHIPS" (Values)
"Federal help for schools"	"STRENGTHEN SCHOOL ANTI DRUG PROGRAMS // PRESIDENT CLINTON DID IT // DOLE AND GINGRICH NO AGAIN" (Photo) "STRENGTHEN SCHOOL ANTI DRUG PROGRAMS // PRESIDENT CLINTON DID IT // REPUBLICANS PLAN TO CUT HELP TO SCHOOLS" (Background) "MORE HELP FOR SMALL CLASSES TEACHING READING AND MATH // PRESIDENT CLINTON GOT IT PASSED // REPUBLICANS WANT TO CUT HELP TO SCHOOLS" (Help) "DOLE GINGRICH TRIED TO SLASH SCHOOL ANTI DRUG PROGRAMS" (Another, Enough)

"Environmental policies" "EPA enforcement" "Toxic waste"	"THE PRESIDENT PROPOSES A BALANCED BUDGET PROTECTING . . . THE ENVIRONMENT // BUT DOLE IS VOTING NO" (Proof, Facts) "BUT WHEN DOLE AND GINGRICH INSISTED ON . . . CUTS IN TOXIC CLEANUP CLINTON VETOED IT" (Supports) "HEADSTART STUDENT LOANS // TOXIC CLEANUP // EXTRA POLICE // ANTI DRUG PROGRAMS // DOLE GINGRICH WANTED THEM CUT // NOW THEY'RE SAFE // PROTECTED IN THE 96 BUDGET BECAUSE THE PRESIDENT STOOD FIRM" (Finish) "TOXIC CLEANUP . . . PROTECTED IN THE BUDGET AGREEMENT // THE PRESIDENT STOOD FIRM" (Same)

"Tax cut for working families"	"THE PRESIDENT CUTS TAXES FOR 40,000,000 AMERICANS // DOLE VOTES NO" (Proof, Facts) "PRESIDENT CLINTON SUPPORTS TAX CREDITS FOR FAMILIES WITH CHILDREN // BUT WHEN DOLE AND GINGRICH INSISTED ON RAISING TAXES ON WORKING FAMILIES . . . CLINTON VETOED IT" (Supports) "THE PRESIDENT'S PLAN // FINISH THE JOB // BALANCE THE BUDGET // REFORM WELFARE // CUT TAXES // PROTECT MEDICARE" (Finish) "DOLE GINGRICH'S LATEST PLAN INCLUDES TAX HIKES ON WORKING FAMILIES" (Same) "FOR MILLIONS OF WORKING FAMILIES PRESIDENT CLINTON CUT TAXES // THE DOLE GINGRICH BUDGET TRIED TO RAISE TAXES ON 8,000,000" (Defend) "PRESIDENT CLINTON CUT TAXES FOR MILLIONS OF WORKING FAMILIES // THE DOLE GINGRICH BUDGET TRIED TO RAISE TAXES ON 8,000,000 OF THEM" (Values)

"Tuition deductibility"	"THE PRESIDENT'S PLAN . . . DEDUCT COLLEGE TUITION . . . BUT DOLE GINGRICH VOTE NO // NO TO AMERICA'S FAMILIES // THE PRESIDENT'S PLAN // MEETING OUR CHALLENGES // PROTECTING OUR VALUES (Supports) "THE PRESIDENT SAYS GIVE EVERY CHILD THE CHANCE FOR COLLEGE WITH A TAX CUT OF 1,500 DOLLARS A YEAR FOR TWO YEARS MAKING MOST COMMUNITY COLLEGES FREE // ALL COLLEGES MORE AFFORDABLE // . . . AND FOR ADULTS A CHANCE TO LEARN // FIND A BETTER JOB // THE PRESIDENT'S TUITION TAX CUT PLAN //. . . BECAUSE YOU'RE NEVER TOO OLD TO LEARN OR TOO YOUNG TO DREAM" (Dreams) "A TAX CUT OF 1,500 DOLLARS A YEAR FOR THE FIRST TWO YEARS OF COLLEGE // MOST COMMUNITY COLLEGES FREE // HELP ADULTS GO BACK TO SCHOOL // THE PRESIDENT'S PLAN PROTECTS OUR VALUES" (Defend) "PRESIDENT CLINTON PROPOSES TAX BREAKS FOR TUITION // THE DOLE GINGRICH BUDGET TRIED TO SLASH COLLEGE SCHOLARSHIPS // ONLY PRESIDENT CLINTON'S PLAN MEETS OUR CHALLENGES // PROTECTS OUR VALUES" (Values)

"100,000 cops"	"100,000 NEW POLICE BECAUSE PRESIDENT CLINTON DELIVERED // DOLE AND GINGRICH VOTED NO // WANT TO REPEAL IT" (Photo) "100,000 NEW POLICE // PRESIDENT CLINTON DELIVERED // DOLE AND GINGRICH VOTED NO" (Background) "THE DOLE GINGRICH BUDGET TRIED TO REPEAL 100,000 NEW POLICE" (Another, Enough)

In making these comparisons between President Clinton's and Senator Dole's policies, each of these advertisements refers to "the Clinton Plan(s)," "the President's Plan," "President Clinton's Plan(s)" or, in one case, "the President's Tuition Tax Cut Plan." Available agendas for weekly strategy meetings that occurred while these advertisements were broadcast track the relative popularity of President Clinton and Senator Dole, and discuss which campaign themes should be stressed. Attachments 57- 70.

Although the foregoing discussion indicates that the principal focus of the Media Team's strategy appears to have been the general election, the need for the candidate to win the Democratic nomination appears to have been a significant consideration in the planning and execution of the advertisement campaign. For example, the September 13, 1995 meeting agenda contemplates that the advertisements broadcast between January 15 and April 15, 1996, would be the "primary flight." Attachment 71. The memorandum lays out a plan to spend $15 million on advertisements "run in primary states which are also swing states for us." *Id.* The document divides the $15 million media purchase between the DNC and the Primary Committee: "Ultimately, likely about $3mil out of campaign and $12 mil out of party." *Id.* As a matter of

fact, approximately $10,085,844 was spent by the DNC for advertisements broadcast during this general period of time.[42] Attachment 11.

Based on the foregoing, it appears that both the import and the purpose of the DNC-funded advertisements broadcast between August 16, 1995 and August 6, 1996 was to garner support for President Clinton in the 1996 primary and general elections, and to diminish support for Senator Dole in the 1996 general election, and the expenditures for these advertisements therefore were made for the purpose of influencing an election for federal office. *See* 2 U.S.C. § 431(9)(A)(i).

D. Attribution Of Expenditures To The Primary or General Committee

To the extent that the DNC-funded advertisements were made in consultation with the candidate and campaign consultants, who were agents of both the Primary Committee and the General Committee, and with the purpose of influencing an election for federal office, the issue remains whether the expenditures for the advertisements should be treated as contributions to the Primary Committee, coordinated party expenditures subject to limitation under 2 U.S.C. § 441a(d)(2), contributions to the General Committee, or some combination of these.

The DNC media campaign appears to have had an overall mixed purpose to influence both the primary and general elections in favor of the candidate. It further appears that the DNC does not claim that the funds used for the advertisements, or any part of those funds, should be attributed to its coordinated party expenditure limit under 2 U.S.C. § 441a(d), nor does it appear

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[42] The period of time on which this amount is calculated begins with the January 10-16, 1996 advertisement flight and ends with the April 12-18, 1996 advertisement flight.

that any part of that limit is unused and available to the DNC. Finally, the advertisements were broadcast prior to President Clinton's date of nomination. The media expenditures therefore were subject to the Primary Committee's expenditure limitations under the Commission's "bright-line" rules at 11 C.F.R. § 9034.4(e). All of the advertisements in question aired before the date of President Clinton's nomination. Thus, under 11 C.F.R § 9034.4(e)(6), the expenditures are subject to the Primary Committee's expenditure limitations.[43]

E. Allocation

It appears that the DNC retained control over the amounts paid for the advertisement campaign, even though most of the payments from the DNC to the media vendors were made through intermediate transfers through state committee accounts, in order to claim a more favorable allocation ratio. This Office believes that the DNC's expenditures for the advertisements were not allocable (under national or state party ratios) since they were contributions to a specific candidate. Thus, it appears that the DNC improperly reported the disbursements when it allocated its disbursements to its media vendors. Therefore, this Office recommends that the Commission find reason to believe that the DNC violated 2 U.S.C. § 434(b)(4). If the Commission concludes that the expenditures for the advertisements were not contributions, and therefore were allocable, it should then consider the issue whether the DNC

[43] The conclusion that these expenditures are related to the primary is consistent with the audit reports on the Clinton committees, which addressed these expenditures only in relation to the Primary Committee. With respect to the Dole committees, this Office notes that the Commission on December 9, 1998 directed the Audit Division to remove from its Report of the Audit Division on the Dole/Kemp '96 and Dole Kemp Compliance Committee, and insert into its Report of the Audit Division on the Dole for President Committee, Inc. (Primary) its analysis of the similar media issue arising in Senator Dole's 1996 campaign, concluding that the media expenses were related to the primary.

was entitled to rely on the more favorable state allocation ratios in connection with the payments which it made through the state committee accounts.[44]

V. APPARENT VIOLATIONS

As a multicandidate committee, the DNC was permitted to contribute $5,000 to the Primary Committee and President Clinton. 2 U.S.C. § 441a(a)(2)(A). Because it appears that the DNC, acting in cooperation, consultation, or concert, with, or at the request or suggestion of, the President and agents of his Primary Committee, expended $47,045,461.22 for advertisements, each of which had the purpose of influencing the election of President Clinton, the Office of General Counsel recommends that the Commission find reason to believe that the DNC made excessive in-kind contributions to the Primary Committee and President Clinton in violation of 2 U.S.C. § 441a(a)(2)(A).

It also appears that the DNC used funds from its non-federal accounts to pay for these advertisements, and the Office of General Counsel therefore recommends that the Commission find reason to believe that the DNC made prohibited contributions to the Primary Committee and President Clinton in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a).

The DNC did not report the disbursements for the advertisements as contributions to the Primary Committee. *See* 2 U.S.C. § 434(b)(4)(H)(i). Further, the expenditures were not allocable, and thus it appears that the DNC improperly reported the disbursements when it allocated its direct disbursements to SKO and November 5. Further, it appears that the DNC

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[44] In MUR 4215 the DNC transferred funds to state Democratic committees for certain generic voter drive activity. It appeared that the purpose of the DNC transferring the funds to the state committees, rather than simply paying the costs out of its own accounts, was to take advantage of the more favorable federal/non-federal allocation ratio. The Commission found nothing improper in such transfers, noting, among other things, that that the state committees "clearly retained ultimate control over the disbursements, not the DNC." Statement of Reasons in MUR 4215 (March 26, 1998) at 3. In this matter it appears that the DNC retained total control over the amounts transferred through the state committee accounts, and that, even if the expenditures were allocable, the DNC improperly applied state allocation ratios to reduce the federal portion paid. *See* 11 C.F.R. § 106.5(a).

improperly reported as transfers to the state committees transactions which were actually DNC payments to SKO and November 5. Although these funds were diverted through the state committee accounts to apply a more favorable allocation ratio, it appears that the DNC retained control of the use of the funds. Therefore, this Office recommends that the Commission find reason to believe that the DNC violated 2 U.S.C. § 434(b)(4).

The Primary Committee and President Clinton were prohibited from accepting any DNC contributions which exceeded the $5,000 contribution limit for multicandidate committees set forth at 2 U.S.C. § 441a(a)(2)(A). 2 U.S.C. § 441a(f). Because it appears that the DNC, acting in cooperation, consultation, or concert, with, or at the request or suggestion of, the President and agents of his Primary Committee, expended $47,045,461.22 for advertisements, each of which had the purpose of influencing the election of President Clinton, the Office of General Counsel recommends that the Commission find reason to believe that the Primary Committee and President Clinton violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from the DNC.

It also appears that the DNC used funds from its non-federal accounts to pay for these advertisements, and the Office of General Counsel therefore recommends that the Commission find reason to believe that the Primary Committee and President Clinton accepted prohibited contributions in violation of 2 U.S.C. § 441b(a).

It further appears that the amount of the Primary Committee's reported expenditures and the amount of the funding for the advertisement campaign together exceed the Primary Committee expenditure limitation, and the Office of General Counsel therefore recommends that the Commission find reason to believe that the Primary Committee and President Clinton exceeded the overall expenditure limitation in violation of 2 U.S.C. §§ 441a(b)(1)(A) and

441a(f), and 26 U.S.C. § 9035(a). Finally, the in-kind contributions were not properly reported, and therefore the Office of General Counsel recommends that the Commission find reason to believe that the Primary Committee violated 2 U.S.C. §§ 434(b)(2)(C) and 434(b)(4) and 11 C.F.R. §§ 104.13(a)(1) and 104.13(a)(2).

Even if the Commission concludes that the DNC expenditures for the advertisements were not in-kind contributions to the Primary Committee, it appears that DNC did control the expenditures and it therefore was not entitled to rely on more favorable state allocation ratios. Therefore, this Office recommends, in the alternative, that the Commission find reason to believe that the DNC violated 11 C.F.R. § 106.5(a) and 2 U.S.C. § 434(b)(4).

These recommendations arise from possible coordinated expenditures made by the DNC for the purpose of influencing President Clinton's election. Nothing in Dr. Fulani's complaint or the facts and analysis set out in this Report suggests that Mr. Ickes, as an individual, is responsible for violating a statute or regulation within the Commission's jurisdiction.[45] This Office therefore recommends that the Commission find no reason to believe that Mr. Ickes violated the federal election laws.

VI. RECOMMENDATIONS

1. Open a MUR;

2. Find reason to believe that the Democratic National Committee, and Carol Pensky, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A);

3. Find reason to believe that the Democratic National Committee, and Carol Pensky, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(b);

4. Find reason to believe that the Democratic National Committee, and Carol Pensky, as treasurer, violated 2 U.S.C. § 434(b)(4);

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[45] It does appear that Mr. Ickes acted on behalf, or as an agent, of the candidate and the Primary Committee in connection with some of the events which give rise to this Office's recommendations against the candidate and the Primary Committee.

5. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, violated 2 U.S.C. § 441a(f);

6. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, violated 2 U.S.C. § 441b(a);

7. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f), and 26 U.S.C. § 9035(a);

8. Find reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(C) and 434(b)(4), and 11 C.F.R. §§ 104.13(a)(1) and 104.13(a)(2);

9. Find reason to believe that President Clinton violated 2 U.S.C. § 441a(f);

10. Find reason to believe that President Clinton violated 2 U.S.C. § 441b(a);

11. Find reason to believe that President Clinton violated 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f), and 26 U.S.C. § 9035(a);

12. In the alternative, find reason to believe that that the Democratic National Committee, and Carol Pensky, as treasurer, violated 11 C.F.R. § 106.5(a) and 2 U.S.C. § 434(b)(4);

13. Process the new MUR and MUR 4713 with MURs 4407 and 4544;

14. Find no reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer; the Democratic National Committee, and Carol Pensky, as treasurer; President William J. Clinton and Harold M. Ickes, Esquire violated any statute or regulation within the jurisdiction of the Federal Election Commission with respect to the remaining allegations in MUR 4713;

15. Find no reason to believe that Harold M. Ickes violated any statute or regulation within the jurisdiction of the Federal Election Commission;

16. Approve the attached Factual and Legal Analyses; and

17. Approve the appropriate letters.

1/11/00
Date

Lawrence M. Noble
General Counsel

Attachments:

1. Memorandum dated June 14, 1999 to Lawrence M. Noble from Robert J. Costa re: Clinton/Gore '96 Primary Committee, Inc. Referral Matters.

2. Lenora M. Fulani Complaint, filed January 30, 1998

3. Common Cause complaint filed with the United Stated Department of Justice, dated October 9, 1997

4. Letter from Gary Sinawski to the Federal Election Commission, dated April 19, 1998 (supplement to Lenora M. Fulani Complaint, filed January 30, 1998)

5. Report of the Audit Division on the Clinton/Gore '96 Primary Committee, Inc. dated November 19, 1998

6. Democratic National Committee Response to Lenora B. Fulani Complaint

7. Democratic National Committee response to Dole for President, Inc. Complaint (MUR 4407), dated August 16, 1996

8. Clinton/Gore '96 Primary Committee, Inc. and Harold M. Ickes Joint Response to Lenora B. Fulani Complaint

9. Response of the Democratic National Committee, the Clinton/Gore '96 Primary Committee, Inc. and the Clinton/Gore '96 General Committee [to Commission reason to believe findings in MURs 4407/4544], dated February 1998

10. Exit Conference Memorandum of the Audit Division On The Clinton/Gore '96 Primary Committee, Inc.

11. Chart: Summary of Advertisement Flights 8/16/95 - 8/6/96

12. Confidential Memorandum dated August 7, 1995, to Chair Fowler, Bobby Watson and Joe Sandler, from Bradley Marshall, re: Media Refund Checks

13. Memorandum dated August 17, 1995, to Chairman Fowler and Chairman Dodd, from Harold Ickes, re: August DNC time-buy

14. Letters dated October 3, 1995 from DNC National Chairman Donald L. Fowler to state democratic committee chairs

15. Letter dated March 29, 1996 from DNC National Chairman Donald L. Fowler to Florida Democratic Party Chair Terrie Brady and fax cover sheet

16. Letter dated April 12, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady and fax cover sheet

17. Letters dated April 12, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to state democratic committee chairs

18. Letter dated April 19, 1996 from DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

19. Letter dated April 26, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

20. Letter dated May 3, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

21. Letter dated May 21, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

22. Letter dated May 31, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

23. Letter dated June 11, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

24. Letter dated June 14, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

25. Letter dated June 26, 1996 from DNC General Chair Christopher J. Dodd and DNC National Chair Donald L. Fowler to Florida Democratic Party Chair Terrie Brady

26. Memorandum dated November 21, 1995 from Harold Ickes to Chairman Dodd and Chairman Fowler re: Monies owed by various Democratic state parties to Squier, Knapp as of 21 November 1995

27. Agenda for March 2, 1995 White House Meeting (prepared by Dick Morris)

28. Confidential Memorandum dated April 12, 1995 from Joe Sandler to Harold Ickes re: Division of Activity Between Re-elect and DNC

29. Agreement dated June 22, 1995 between the Media Team (Squier/Knapp/Ochs Communications, Hank Sheinkopf and Marius Penczner Productions) and the Clinton/Gore '96 Primary Committee, Inc.

30. Agenda for June 21, 1995 White House Meeting (prepared by Dick Morris)

31. Memorandum dated August 14, 1995 to the President, from Harold Ickes and Doug Sosnik re: Certain issues regarding the 1996 re-elect effort

32. Memorandum dated October 23, 1995 to Chairman Fowler from Harold Ickes re: DNC budget

33. Memorandum dated November 2, 1995 to Senator Dodd from David Gillette re: Your meeting tomorrow with Fowler, Ickes and Sosnik

34. Memorandum dated November 27, 1995 to Chairman Dodd, Chairman Fowler *et al.*, from Harold Ickes re: DNC media fund

35. Memorandum dated January 15, 1996 to Chairman Fowler from Harold Ickes re: DNC 1996 budget, dated 20 December 1995

36. Memorandum dated November 2, 1995 to Senator Dodd from David Gillette re: Today's DNC meeting with Ickes & Sosnik (w/o attachments)

37. Memorandum dated March 18, 1996 to the President and the Vice President from Harold Ickes re: Contract between the C/G '96 Re-elect and The Media Team (Squier & Knapp/ Morris/ Penn & Schoen/ et al.)

38. Memorandum dated March 25, 1996 to the President and the Vice President from Harold Ickes re: Contract with the consultants (The Media Team) regarding polling, production of media and commission on airtime purchased

39. Memorandum dated April 17, 1996 to Chairman Fowler from Harold Ickes re: 15 April 1996 meeting

40. Memoranda to Jennifer O'Connor from Harold Ickes and Doug Sosnik re: Authorization to Squier, Knapp, Ochs

41. Memoranda to Jennifer O'Connor from Harold Ickes and Doug Sosnik re: Authorization to Penn And Schoen For Polling

42. Letter dated June 13, 1996 from Harold Ickes to William Knapp

43. Memorandum dated June 24, 1996 to the President and the Vice President from Harold Ickes re: Financial terms with The November 5 Group

44. Memorandum dated June 26, 1996 to the President and the Vice President from Harold Ickes re: Revised estimated DNC "budgets" as of 19 June 1996

45. Memo dated February 22, 1996 [from Dick Morris] to President. Vice President, Panetta, Ickes, Lieberman, Lewis and Sosnik Only

46. Agenda for February 22, 1996 White House Meeting (prepared by Dick Morris)

47. Chart: Summary of Advertisement Scripts

48. Agenda for May 4, 1995 White House Meeting (prepared by Dick Morris)

49. Agenda for July 26, 1995 White House Meeting (prepared by Dick Morris)

50. Agenda for August 3, 1995 White House Meeting (prepared by Dick Morris)

51. Agenda for September 7, 1995 White House Meeting (prepared by Dick Morris)

52. Agenda for September 25, 1995 White House Meeting (prepared by Dick Morris)

53. Agenda for October 11, 1995 White House Meeting (prepared by Dick Morris)

54. Agenda for October 25, 1995 White House Meeting (prepared by Dick Morris)

55. Agenda for March 6, 1996 White House Meeting (prepared by Dick Morris)

56. Agenda for April 1, 1996 White House Meeting (prepared by Dick Morris)

57. Agenda for April 24, 1996 White House Meeting (prepared by Dick Morris)

58. Agenda for May 9, 1996 White House Meeting (prepared by Dick Morris)

59. Agenda for May 15, 1996 White House Meeting (prepared by Dick Morris)

60. Agenda for May 24, 1996 White House Meeting (prepared by Dick Morris)

61. Agenda for May 29, 1996 White House Meeting (prepared by Dick Morris)

62. Agenda for June 6, 1996 White House Meeting (prepared by Dick Morris)

63. Agenda for June 12, 1996 White House Meeting (prepared by Dick Morris)

64. Agenda for June 20, 1996 White House Meeting (prepared by Dick Morris)

65. Agenda for June 25, 1996 White House Meeting (prepared by Dick Morris)

66. Agenda for July 3, 1996 White House Meeting (prepared by Dick Morris)

67. Agenda for July 9, 1996 White House Meeting (prepared by Dick Morris)

68. Agenda for July 18, 1996 White House Meeting (prepared by Dick Morris)

69. Agenda for July 24, 1996 White House Meeting (prepared by Dick Morris)

70. Agenda for August 1, 1996 White House Meeting (prepared by Dick Morris)

71. Agenda for September 13, 1995 White House Meeting (prepared by Dick Morris)

72. Factual and Legal Analysis for The Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer

73. Factual and Legal Analysis for The Democratic National Committee, and Carol Pensky, as treasurer

74. Factual and Legal Analysis for President William J. Clinton